CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
FEBRUARY 18, 2014

Paul S. Leon
Mayor

Alan D. Wapner
Mayor pro Tem

Jim W. Bowman
Council Member

Debra Dorst-Porada
Council Member

Paul Vincent Avila
Council Member

Al C. Boling
City Manager

John E. Brown
City Attorney

Mary E. Wirtes, MMC
City Clerk

James R. Milhiser
Treasurer

WELCOME to a meeting of the Ontario City Council.

- All documents for public review are on file with the Records Management/City Clerk's Department located at 303 East B Street, Ontario, CA 91764.
- Anyone wishing to speak during public comment or on a particular item will be required to fill out a blue slip. Blue slips must be turned in prior to public comment beginning or before an agenda item is taken up. The Clerk will not accept blue slips after that time.
- Comments will be limited to 3 minutes. Speakers will be alerted when they have 1 minute remaining and when their time is up. Speakers are then to return to their seats and no further comments will be permitted.
- In accordance with State Law, remarks during public comment are to be limited to subjects within Council's jurisdiction. Remarks on other agenda items will be limited to those items.
- Remarks from those seated or standing in the back of chambers will not be permitted. All those wishing to speak including Council and Staff need to be recognized by the Chair before speaking.

ORDER OF BUSINESS: The regular City Council and Housing Authority meeting begins with Closed Session and Closed Session Comment at 6:00 p.m., Public Comment at 6:30 p.m. immediately followed by the Regular Meeting and Public Hearings. No agenda item will be introduced for consideration after 10:00 p.m. except by majority vote of the City Council.

(EQUIPMENT FOR THE HEARING IMPAIRED AVAILABLE IN THE RECORDS MANAGEMENT OFFICE)

CALL TO ORDER *(OPEN SESSION)* 6:00 p.m.

ROLL CALL

Wapner, Bowman, Dorst-Porada, Avila, Mayor/Chairman Leon

CLOSED SESSION PUBLIC COMMENT The Closed Session Public Comment portion of the Council/Housing Authority meeting is limited to a maximum of 3 minutes for each speaker and comments will be limited to matters appearing on the Closed Session. Additional opportunities for further Public Comment will be given during and at the end of the meeting.

CLOSED SESSION

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
  Property: APN 1049-221-01; 616 East Sunkist Street; City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: Majestic Realty Company; Under negotiation: Price and terms of payment.

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *City of Ontario vs. City of Los Angeles, Los Angeles World Airports, and Los Angeles Board of Airport Commissioners, RIC 1306498*

In attendance: Wapner, Bowman, Dorst-Porada, Avila, Mayor/Chairman Leon

PLEDGE OF ALLEGIANCE

Council Member Avila

INVOCATION

Pastor Steve Marquedant, Sovereign Grace Baptist Church

REPORT ON CLOSED SESSION

City Attorney

PUBLIC COMMENTS 6:30 p.m.

The Public Comment portion of the Council/Housing Authority meeting is limited to 30 minutes with each speaker given a maximum of 3 minutes. An opportunity for further Public Comment may be given at the end of the meeting. Under provisions of the Brown Act, Council is prohibited from taking action on oral requests.

As previously noted -- if you wish to address the Council, fill out one of the blue slips at the rear of the chambers and give it to the City Clerk.

AGENDA REVIEW/ANNOUNCEMENTS: The City Manager will go over all updated materials and correspondence received after the Agenda was distributed to ensure Council Members have received them. He will also make any necessary recommendations regarding Agenda modifications or announcements regarding Agenda items to be considered.

SPECIAL CEREMONIES

LEAGUE OF CALIFORNIA CITIES HELEN PUTNAM AWARDS

CONSENT CALENDAR

All matters listed under CONSENT CALENDAR will be enacted by one motion in the form listed below – there will be no separate discussion on these items prior to the time Council votes on them, unless a member of the Council requests a specific item be removed from the Consent Calendar for a separate vote.

Each member of the public wishing to address the City Council on items listed on the Consent Calendar will be given a total of 3 minutes.

1. APPROVAL OF MINUTES

Minutes for the regular meeting of the City Council and Housing Authority of January 21, 2014, and approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills January 12, 2014 through January 25, 2014 and **Payroll** January 12, 2014 through January 25, 2014, when audited by the Finance Committee.

3. A RESOLUTION DESIGNATING THE CITY OF ONTARIO AS THE FUTURE LOCATION FOR THE FREEDOM'S FLAME MEMORIAL

That the City Council adopt a resolution designating the City of Ontario as the future location for the Freedom's Flame Memorial.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DESIGNATING THE CITY OF ONTARIO AS THE FUTURE LOCATION FOR THE FREEDOM'S FLAME MEMORIAL.

4. A RESOLUTION OF THE SUCCESSOR AGENCY TO THE FORMER ONTARIO REDEVELOPMENT AGENCY RECOMMENDING THE OVERSIGHT BOARD RATIFY AND DIRECT THE SUCCESSOR AGENCY TRANSFER OF OWNERSHIP OF CERTAIN PUBLIC USE ASSETS PREVIOUSLY OWNED BY THE REDEVELOPMENT AGENCY TO THE CITY OF ONTARIO PURSUANT TO HEALTH AND SAFETY CODE SECTIONS 34177 AND 34181

That the City Council, acting as the Successor Agency to the former Ontario Redevelopment Agency, adopt a resolution recommending that the Oversight Board to the Successor Agency ratify and direct the transfer of certain public purpose assets previously owned by the Ontario Redevelopment Agency to the City of Ontario pursuant to Health and Safety Code sections 34177 and 34181.

RESOLUTION NO. _____

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE OVERSIGHT BOARD RATIFY AND DIRECT THE SUCCESSOR AGENCY TRANSFER OF OWNERSHIP OF CERTAIN PUBLIC USE ASSETS PREVIOUSLY OWNED BY THE REDEVELOPMENT AGENCY, TO THE CITY OF ONTARIO PURSUANT TO HEALTH AND SAFETY CODE SECTIONS 34177 AND 34181.

5. A RESOLUTION ORDERING THE SUMMARY VACATION OF A PUBLIC STREET EASEMENT

That the City Council adopt a resolution ordering the summary vacation of an unimproved public street easement located south of Sixth Street approximately 630 feet east of the Interstate 10 Freeway.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF A PUBLIC STREET EASEMENT LOCATED SOUTH OF SIXTH STREET APPROXIMATELY 630 FEET EAST OF INTERSTATE 10 FREEWAY.

6. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18476 LOCATED AT THE NORTHEAST CORNER OF TURNER AVENUE AND SCHAEFER AVENUE

That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Tract Map No. 18476 located at the northeast corner of Turner Avenue and Schaefer Avenue.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18476 LOCATED ON THE NORTHEAST CORNER OF TURNER AVENUE AND SCHAEFER AVENUE.

7. A RESOLUTION APPROVING PARCEL MAP NO. 19383 LOCATED AT THE NORTHWEST CORNER OF MILLIKEN AVENUE AND LOWELL STREET

That the City Council adopt a resolution approving Parcel Map No. 19383 located at the northwest corner of Milliken Avenue and Lowell Street.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING PARCEL MAP NO. 19383 LOCATED ON THE NORTHWEST CORNER OF MILLIKEN AVENUE AND LOWELL STREET.

8. A RESOLUTION DEDICATING PORTIONS OF CITY-OWNED PARCELS ON EUCALYPTUS AND EDISON AVENUES AS RIGHTS-OF-WAY FOR PUBLIC ROAD AND UTILITY PURPOSES

That the City Council adopt a resolution dedicating portions of City-owned parcels on Eucalyptus Avenue (APNs: 0218-241-20 & 23) and Edison Avenue (APN: 0218-241-15) as rights-of-way for public road and utility purposes and authorize the City Manager to execute the grant deeds dedicating the properties.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DEDICATING PORTIONS OF CITY-OWNED PARCELS ON EUCALYPTUS AND EDISON AVENUES AS RIGHTS-OF-WAY FOR PUBLIC ROAD AND UTILITY PURPOSES.

9. FISCAL YEAR 2013-14 MID-YEAR BUDGET REPORT

That the City Council approve the budget adjustments and recommendations as listed in the Fiscal Year 2013-14 Mid-Year Budget Report.

10. RESOLUTIONS APPROVING THE THIRD AMENDMENT TO THE HOME PROGRAM PARTICIPATION AGREEMENT AMONG MERCY HOUSE LIVING CENTERS, ONTARIO HOUSING AUTHORITY, AND THE CITY OF ONTARIO RELATED TO GUADALUPE RESIDENCE

That the City Council and the Board of the Ontario Housing Authority adopt resolutions approving the Third Amendment to the HOME Program Participation Agreement with Mercy House Living Centers Inc. of Santa Ana, CA (on file with the Records Management Department), related to the property located at 412 North Parkside Avenue.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A THIRD AMENDMENT TO THE HOME PROGRAM PARTICIPATION AGREEMENT WITH THE ONTARIO HOUSING AUTHORITY AND MERCY HOUSE LIVING CENTERS REGARDING PROPERTY LOCATED AT 412 N. PARKSIDE AVENUE.

RESOLUTION NO. _____

A RESOLUTION OF THE ONTARIO HOUSING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING OF A THIRD AMENDMENT TO THE HOME PROGRAM PARTICIPATION AGREEMENT WITH THE CITY OF ONTARIO AND MERCY HOUSE LIVING CENTERS REGARDING PROPERTY LOCATED AT 411 & 412 N. PARKSIDE AVENUE.

PUBLIC HEARINGS

11. A PUBLIC HEARING TO CONSIDER AN OPERATING COVENANT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND PAG ONTARIO B1 INC.

It is recommended that Ontario City Council approve a resolution authorizing the City Manager to execute an Operating Covenant Agreement between the City of Ontario and PAG Ontario B1 Inc., a Delaware Corporation.

Notice of public hearing has been duly given and affidavits of compliance are on file in the Records Management Department.

Written communication.
Oral presentation.
Public hearing closed.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN OPERATING COVENANT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND PAG ONTARIO B1, INC.

12. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN ONTARIO SCHAEFFER HOLDINGS, LLC, AND THE CITY OF ONTARIO TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE

That the City Council introduce and waive further reading of an ordinance approving an amendment (File No. PDA14-001) to the Development Agreement between Ontario Schaefer Holdings, LLC of Anaheim Hills, CA, and the City of Ontario to update certain provisions of the existing Development Agreement to conform with the Construction Agreement Amendment with NMC Builders, LLC, and to provide for phasing of the construction of public infrastructure.

Notice of public hearing has been duly given and affidavits of compliance are on file in the Records Management Department.

Written communication.
Oral presentation.
Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS, LLC, FILE NO. PDA14-001, TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT TO CONFORM WITH THE CONSTRUCTION AGREEMENT AMENDMENT WITH NMC BUILDERS LLC, AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN TRACT MAP NO. 18419, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0218-201-14 AND 44)

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

13. CONSIDERATION OF ELECTED OFFICIALS COMPENSATION

That the City Council consider and give direction for a modification to the monthly salary amounts for elected officials subject to California Government Code Section 36516; Ontario Municipal Code Title 2, Chapter 1, Article 2; and Ontario Municipal Code Title 2, Chapter 3, Article 5.

COUNCIL MATTERS

LIBRARY BOARD APPOINTMENT

Mayor Leon
Mayor pro Tem Wapner
Council Member Bowman
Council Member Dorst-Porada
Council Member Avila

STAFF MATTERS

City Manager Boling

ADJOURNMENT

CITY OF ONTARIO
CLOSED SESSION REPORT
City Council / / Housing Authority / /
Other / / *(GC 54957.1)*
February 18, 2014

ROLL CALL: Wapner __, Bowman __, Dorst-Porada __, Avila __
Mayor / Chairman Leon __.

STAFF: City Manager / Executive Director __, City Attorney __

In attendance: Wapner _, Bowman _, Dorst-Porada _, Avila _, Mayor / Chairman Leon _

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
  Property: APN 1049-221-01; 616 East Sunkist Street; City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: Majestic Realty Company; Under negotiation: Price and terms of payment.

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

In attendance: Wapner _, Bowman _, Dorst-Porada _, Avila _, Mayor / Chairman Leon _

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *City of Ontario vs. City of Los Angeles, Los Angeles World Airports, and Los Angeles Board of Airport Commissioners, RIC 1306498*

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

Reported by: _____
City Attorney / City Manager / Executive Director

CITY OF ONTARIO

Agenda Report
February 18, 2014

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION DESIGNATING THE CITY OF ONTARIO AS THE FUTURE LOCATION FOR THE FREEDOM'S FLAME MEMORIAL

RECOMMENDATION: That the City Council adopt a resolution designating the City of Ontario as the future location for the Freedom's Flame Memorial.

COUNCIL GOALS: **Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health**
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

FISCAL IMPACT: The Freedom's Flame Foundation will raise all funds to pay for costs associated with the memorial, expected to be approximately $15 million. Once the Freedom's Flame Foundation funds the memorial, the City of Ontario will find an appropriate public location to display the memorial.

BACKGROUND: The Freedom's Flame Foundation is a 501(c) (3) non-profit organization created to fund and manage the development of a memorial and the creation of two sculptures; one to be located in Southern California and the other in New York City. Freedom's Flame is the story of two identical sculptures designed, created, and erected by a multidisciplinary team of distinguished leaders, representatives of the arts, the military, criminal justice, firefighters, small business, major corporations, public administration and the non-profit sector.

The Freedom's Flame Memorial will be a thirty-five foot high sculpture that depicts a scene representative of the World Trade Center. There will also be many features that convey the tragedy of the event and the fortitude of those that were involved in the response. Adjacent to the sculpture will be actual materials from all three crash sites – the World Trade Center in New York, the Pentagon in Washington, D.C., and the Flight 93 crash site in Shanksville, Pennsylvania.

STAFF MEMBER PRESENTING: Al C. Boling, City Manager

Prepared by: Nicholas Gonzalez
Department: Administration

City Manager Approval: ALC

Submitted to Council/O.H.A. 02/18/2014
Approved:
Continued to:
Denied:

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The Freedom's Flame sculpture is recommended to be located in Ontario, California to commemorate September 11, 2001 and to honor the heroes and families that have been touched by this tragic event. The second and identical sculpture will be presented by the Freedom's Flame Foundation to New York City as a gift, to create a strong bi-coastal link and a powerful tribute across the Nation.

The total cost of the project is expected to be approximately $15 million. The Freedom's Flame Foundation is committed to raising all funds necessary for the design, manufacture and installation of the sculpture. Once the Freedom's Flame Foundation raises funds for the sculpture, the City of Ontario will find an appropriate public location to display the memorial.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DESIGNATING THE CITY OF ONTARIO AS THE FUTURE LOCATION FOR THE FREEDOM'S FLAME MEMORIAL.

WHEREAS, on September 11, 2001, the United States experienced sudden and tragic loss of human life at the hands of foreign terrorists in New York, Washington, D.C. and Pennsylvania; and

WHEREAS, the Freedom's Flame Foundation, a 501(c) (3) non-profit organization, was established to raise funds for the design and installation of two identical memorials that will be a remembrance of the tragic events of September 11th and pay tribute to those who displayed extraordinary courage in the face of overwhelming disaster; one memorial to be displayed on the west coast and one on the east coast; and

WHEREAS, the Freedom's Flame Foundation, is committed to raising funds to pay for costs associated with the design, manufacturing and installation of the City Council-approved design concept for the sculptures; and

WHEREAS, the Freedom's Flame sculpture would be a meaningful addition to the City of Ontario; and

WHEREAS, the City of Ontario will work with the Freedom's Flame Foundation in reviewing the design, location and timeframe for displaying informational signage, as well as coordinating other issues associated with the installation of the memorial.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO HEREBY RESOLVES, to be the host for the west coast site for the Freedom's Flame Memorial and to support the Freedom's Flame Foundation efforts to build the memorial in Ontario.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 18th day of February 2014.

_____

PAUL S. LEON, MAYOR

ATTEST:

_____
MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 18, 2014 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2014- duly passed and adopted by the Ontario City Council at their regular meeting held February 18, 2014.

_____
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
February 18, 2014

SECTION:
CONSENT CALENDAR

SUBJECT: **A RESOLUTION OF THE SUCCESSOR AGENCY TO THE FORMER ONTARIO REDEVELOPMENT AGENCY RECOMMENDING THE OVERSIGHT BOARD RATIFY AND DIRECT THE SUCCESSOR AGENCY TRANSFER OF OWNERSHIP OF CERTAIN PUBLIC USE ASSETS PREVIOUSLY OWNED BY THE REDEVELOPMENT AGENCY TO THE CITY OF ONTARIO PURSUANT TO HEALTH AND SAFETY CODE SECTIONS 34177 AND 34181**

RECOMMENDATION: That the City Council, acting as the Successor Agency to the former Ontario Redevelopment Agency, adopt a resolution recommending that the Oversight Board to the Successor Agency ratify and direct the transfer of certain public purpose assets previously owned by the Ontario Redevelopment Agency to the City of Ontario pursuant to Health and Safety Code sections 34177 and 34181.

COUNCIL GOALS: **Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health**
Invest in the Growth and Evolution of the City's Economy

FISCAL IMPACT: There is no fiscal impact associated with this transfer of title and ownership.

BACKGROUND: On February 1, 2012, the Ontario Redevelopment Agency was dissolved and the City of Ontario assumed the role as the Successor Agency to the former Ontario Redevelopment Agency. Pursuant to Health and Safety Code section 34179, an Oversight Board responsible for approving the actions of the Successor Agency was formed. The first Oversight Board meeting was held on April 26, 2012, with the Board continuing to meet monthly.

The Successor Agency is responsible for disposing of assets and properties of the former Ontario Redevelopment Agency, as directed by the Oversight Board, expeditiously and in a manner aimed at maximizing value. Pursuant to Health and Safety Code section 34181(a), the Oversight Board may direct the Successor Agency to transfer ownership of assets that were constructed and used for a

STAFF MEMBER PRESENTING: John Andrews, Economic Development Director

Prepared by: Charity Hernandez
Department: Economic Development

City Manager Approval:

Submitted to Council/O.H.A. 02/18/2014
Approved:
Continued to:
Denied:

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governmental purpose (such as roads, school buildings, parks, and fire stations) to the appropriate public jurisdiction relating to the construction or use of such assets.

The Redevelopment Agency previously directed the transfer of the assets through a Cooperation Agreement, dated February 15, 2011. However, pursuant to AB 1X 26 assets transferred between the former Redevelopment Agency and the City which occurred after January 1, 2011 are invalid. At this time, staff is requesting the previous transfer of certain assets be ratified.

As a general matter, the requirements governing the disposition of assets and properties are suspended until such time that the Successor Agency receives a Finding of Completion from the State Department of Finance. Health and Safety Code section 34191.3 explicitly states that the Successor Agency can still transfer properties held for governmental use to the City prior to receiving a Finding of Completion.

The State Controller's Office recently performed an audit of the transfers of the former Redevelopment Agency. If these previous transfers are not ratified by the Oversight Board, it is likely the State Controller's Office will order these assets returned to the Successor Agency for future disposition.

It is recommended that the Oversight Board ratify and direct the Successor Agency to transfer ownership of the public purpose assets listed in the schedule below to the City of Ontario.

- Ontario Housing Authority, Municipal Services, and Code Enforcement Office Building and Contiguous Public Parking Lot
  - 221 West Transit Street - Assessor Parcel No. 1049-056-01
  - 211 West Transit Street - Assessor Parcel No.'s 1049-056-02 and 1049-056-03
  - 200 South Laurel Avenue - Assessor Parcel No. 1049-056-04
  - 208 West Emporia Street - Assessor Parcel No. 1049-056-05
  - 228 West Emporia Street - Assessor Parcel No. 1049-056-06

- Ontario Town Square-Public Park/Plaza
  - 126 East "C" Street - Assessor Parcel No. 1049-552-13
  - 124 East "C" Street - Assessor Parcel No. 1049-552-14
  - 208-228 North Euclid Avenue - Assessor Parcel No. 1049-552-16
  - 230 North Euclid Avenue - Assessor Parcel No. 1049-552-18

- Public Parking Lots Serving the Ontario Convention Center
  - 2000 East Holt Boulevard- Assessor Parcel No. 0110-322-34
  - 1947 East Convention Center Way - Assessor Parcel No. 0110-321-57

- Public Parking Lot Serving the Ontario Fire Department Administration and Fire Station No.1
  - 502 East Nocta Street - Assessor Parcel No. 1048-521-13

- Public Parking Lot Serving Ovitt Family Library
  - Southwest Corner of Lemon Avenue and "D" Street– Assessor Parcel No. 1048-556-14

RESOLUTION NO. _____

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE OVERSIGHT BOARD RATIFY AND DIRECT THE SUCCESSOR AGENCY TRANSFER OF OWNERSHIP OF CERTAIN PUBLIC USE ASSETS PREVIOUSLY OWNED BY THE REDEVELOPMENT AGENCY, TO THE CITY OF ONTARIO PURSUANT TO HEALTH AND SAFETY CODE SECTIONS 34177 AND 34181.

WHEREAS, pursuant to Health and Safety Code Section 34173(d), the City of Ontario ("Successor Agency") is the successor agency to the Ontario Redevelopment Agency ("Agency"), confirmed by Resolution No. 2012-001 on January 10, 2012; and

WHEREAS, pursuant to Health and Safety Code section 34179(a), the Oversight Board is the Successor Agency's oversight board; and

WHEREAS, pursuant to Health and Safety Code section 34177(e), the Successor Agency is responsible for disposing of the assets and properties of the former Agency, as directed by the Oversight Board, expeditiously and in a manner aimed at maximizing value; provided, however, that pursuant to Health and Safety Code section 34181(a), the Oversight Board may instead direct the Successor Agency to transfer ownership of assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset; and

WHEREAS, the Agency was the owner of certain public purpose assets and transferred said assets to the City in March 2011; and

WHEREAS, the validity of that transfer was called into question by AB 1X26; and

WHEREAS, the Successor Agency seeks to ratify and confirm such transfers.

NOW, THEREFORE, THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. Transfer of Public Assets the City. The Successor Agency recommends the Oversight Board adopt a resolution ratifying and directing the Successor Agency to transfer certain public purpose assets, as further described in Attachment 1 to this Resolution, to the City, pursuant to Health and Safety Code sections 34177 and 34181.

SECTION 3. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Successor Agency declares that the Successor Agency would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 4. Certification. The City Clerk of the City of Ontario, acting on behalf of the Successor Agency as its Secretary, shall certify to the adoption of this Resolution.

SECTION 5. Effective Date. This Resolution shall be effective upon its adoption.

PASSED, APPROVED, AND ADOPTED this 18th day of February 2014.

_____
PAUL S. LEON, CHAIRMAN

ATTEST:

_____
MARY E. WIRTES, AGENCY SECRETARY

APPROVED AS TO LEGAL FORM:

_____
BEST BEST & KRIEGER LLP
AGENCY COUNSEL

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, in my official capacity as secretary to the Successor Agency to the Ontario Redevelopment Agency, DO HEREBY CERTIFY that Resolution No. SA- was duly adopted by the Successor Agency to the Ontario Redevelopment Agency at a regular meeting held on the 18th day of February, 2014, by the following vote:

AYES: AGENCY MEMBERS:

NOES: AGENCY MEMBERS:

ABSENT: AGENCY MEMBERS:

_____
MARY E. WIRTES, AGENCY SECRETARY

(SEAL)

The foregoing is the original of Resolution No. SA- duly passed and adopted by the Successor Agency to the Ontario Redevelopment Agency at their regular meeting held February 18, 2014.

_____
MARY E. WIRTES, AGENCY SECRETARY

(SEAL)

RESOLUTION NO. ____

ATTACHMENT 1

1. The Ontario Housing Authority, Municipal Services, and Code Enforcement Office Building and contiguous Parking Lot.

    a. 221 West Transit Street - Assessor Parcel No. 1049-056-01
    b. 211 West Transit Street - Assessor Parcel No.'s 1049-056-02 and 1049-056-03
    c. 200 South Laurel Avenue - Assessor Parcel No. 1049-056-04
    d. 208 West Emporia Avenue - Assessor Parcel No. 1049-056-05
    e. 228 West Emporia Avenue - Assessor Parcel No. 1049-056-06

2. Ontario Town Square-Public Park/Plaza

    a. 126 East "C" Street - Assessor Parcel No. 1049-552-13
    b. 124 East "C" Street - Assessor Parcel No. 1049-552-14
    c. 208-228 North Euclid Avenue - Assessor Parcel No. 1049-552-16
    d. 230 North Euclid Avenue - Assessor Parcel No. 1049-552-18

3. Public Parking Lots Serving the Ontario Convention Center

    a. 2000 East Holt Boulevard- Assessor Parcel No. 0110-322-34
    b. 1947 East Convention Center Way - Assessor Parcel No. 0110-321-57

4. Public Parking Lot Serving Ontario Fire Department Administration and Fire Station No.1

    a. 502 East Nocta Avenue - Assessor Parcel No. 1048-521-13

5. Public Parking Lot Serving Ovitt Family Library

    a. Southwest Corner of Lemon Avenue and "D" Street – Assessor Parcel No. 1048-556-14

CITY OF ONTARIO

Agenda Report
February 18, 2014

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION ORDERING THE SUMMARY VACATION OF A PUBLIC STREET EASEMENT

RECOMMENDATION: That the City Council adopt a resolution ordering the summary vacation of an unimproved public street easement located south of Sixth Street approximately 630 feet east of the Interstate 10 Freeway.

COUNCIL GOALS: **Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health**
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: None. The City will not incur any cost by vacating this public easement. The applicant has paid the applicable processing fees to defray the City's cost to process this request.

BACKGROUND: The applicant, Pacific Wholesale Shutters & Blinds (Trac Phan/Owner), has requested that the City vacate the unimproved 33-foot wide by 136-foot long public street easement within the property located south of Sixth Street approximately 630 feet east of the Interstate 10 Freeway as shown on Exhibit 1. The easement was originally dedicated to the City for public street purposes. However, this street has not been constructed and is not included in the current City Master Plan of Streets and Highways. Therefore, the subject easement is not needed for any present or future street purposes and is determined to be excess.

Section 8334 (a) of the California Streets and Highways Code authorizes the City to summarily vacate (by resolution with no public hearing) an excess right-of-way of a street or highway not required for street or highway purposes.

STAFF MEMBER PRESENTING: Louis Abi-younes, P.E., City Engineer

Prepared by: Miguel Sotomayor
Department: Engineering

City Manager Approval:

Submitted to Council/O.H.A. 02/18/2014
Approved:
Continued to:
Denied:

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF A PUBLIC STREET EASEMENT LOCATED SOUTH OF SIXTH STREET APPROXIMATELY 630 FEET EAST OF INTERSTATE 10 FREEWAY.

WHEREAS, the City Council of the City of Ontario, California, pursuant to Division 9, Part 3, Chapter 4, of the Streets and Highways Code, may summarily vacate an easement under certain conditions specified therein; and

WHEREAS, the public street easement over the easterly portion of Lot 726, Ontario Colony Lands as per Plat recorded in Book 11 of Maps, Page 6 in the City of Ontario, County of San Bernardino, State of California, with said easement filed in Book 2382, Page 159 in the County Recorder's Office of said County and located south of Sixth Street approximately 630 feet east of Interstate 10 freeway, is not needed for any present or future street purposes and is determined to be excess; and

WHEREAS, Section 8334(a) of the California Streets and Highways Code authorizes the City to summarily vacate (by resolution with no public hearing) an excess right-of-way of a street or highway not required for street or highway purposes; and

WHEREAS, the property owner has requested a vacation of said easement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California:

1. That the above recitals are true and correct.

2. That title to the above-described portion of said easement more specifically described in Exhibit "A" and depicted on Exhibit "B" shall be vacated.

3. That the City Clerk of the City of Ontario, California, shall cause a copy of this Resolution to be recorded in the office of the County Recorder of San Bernardino County, California.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 18th day of February 2014.

_____

PAUL S. LEON, MAYOR

ATTEST:

_____
MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST BEST & KRIEGER, LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 18, 2014 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

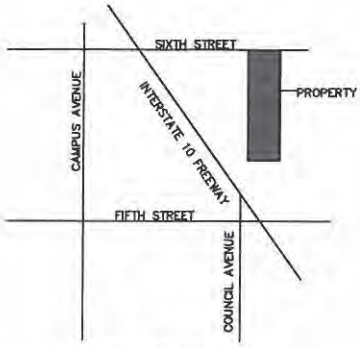
The foregoing is the original of Resolution No. 2014- duly passed and adopted by the Ontario City Council at their regular meeting held February 18, 2014.

_____
MARY E. WIRTES, MMC, CITY CLERK

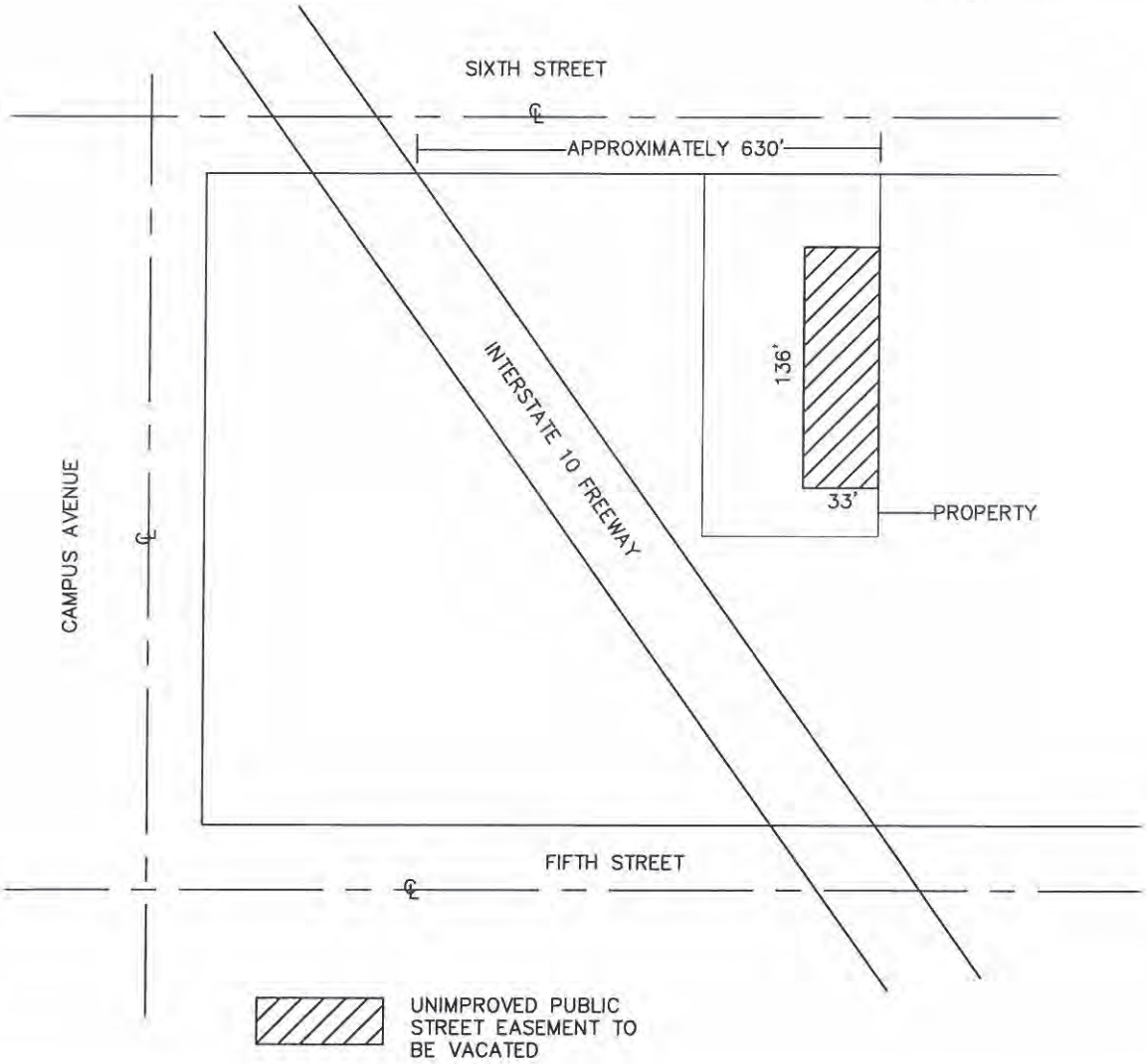
(SEAL)

EXHIBIT 1

NOT TO SCALE



VICINITY MAP
N.T.S.



CITY OF ONTARIO ENGINEERING DEPARTMENT	APPLICANT: PACIFIC WHOLESALE SHUTTERS AND BLINDS PROJECT: V-255

EXHIBIT A

V-255

LEGAL DESCRIPTION

The East Thirty Three (33) Feet of the South One Hundred Thirty Six (136) Feet of the North One Hundred Eighty Six (186) Feet of Lot 726, Ontario Colony Lands as per Plat recorded in Book 11 of Maps, Page 6 in the County of San Bernardino, State of California.

Containing approximately 4849 SF (.11 ACRES) Net and Gross

This Legal Description was prepared under my supervision.

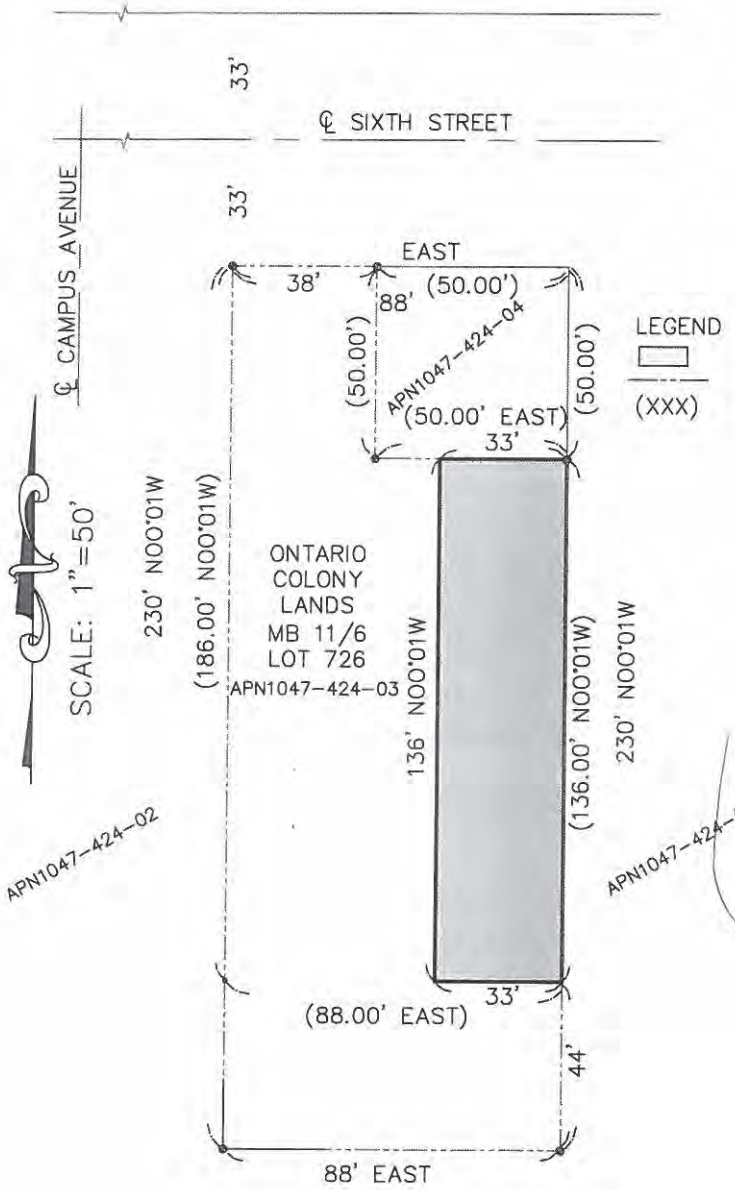
PAUL C. BERGER, RCE 20239

EXP DT SEPTEMBER 30, 2013

February 21, 2013

REGISTERED PROFESSIONAL ENGINEER
PAUL C. BERGER
No. 20239
Exp. 09-30-13
CIVIL
STATE OF CALIFORNIA

EXHIBIT B
V-255
EASEMENT VACATION
APN 1047-424-03



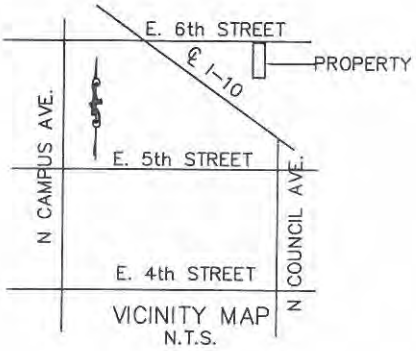
4488 SF (0.10 ACRES) GROSS AND NET

LEGEND

PUBLIC STREET EASEMENT TO BE VACATED

PROPERTY LINE

(XXX) RECORD DATA PER RS 7-41



THIS PLAT WAS MADE WITH MY KNOWLEDGE & CONSENT

PAUL C. BERGER, PE
RCE 20239. EXP. DT. 9-30-2013

CITY OF ONTARIO

Agenda Report
February 18, 2014

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18476 LOCATED AT THE NORTHEAST CORNER OF TURNER AVENUE AND SCHAEFER AVENUE

RECOMMENDATION: That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Tract Map No. 18476 located at the northeast corner of Turner Avenue and Schaefer Avenue.

COUNCIL GOALS: **Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health**
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains, and Public Facilities)
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

FISCAL IMPACT: None. All public infrastructure improvements required for this subdivision will be constructed by the developer at its sole cost.

BACKGROUND: The 28.23 acre subdivision, for residential purposes, located within Planning Area 9 of the West Haven Specific Plan, as shown on Exhibit 1, was submitted by the developer, Lennar Homes of California, Inc., of Corona, California. The development consists of 143 lots for single family homes and 11 lettered lots for open space and public utility purposes as shown on the attached exhibit. Improvements required of the project include roadway construction, curb and gutter, sidewalk, street lights, sewer, water and storm drain improvements and parkway landscaping. Tentative Tract Map No. 18476 was approved by the Planning Commission on July 24, 2007. At that time, the property was owned by Armada Ontario Associates, of Newport Beach, California.

This map meets all conditions of the Subdivision Map Act and the Ontario Municipal Code and has been reviewed and approved by the City Engineer.

STAFF MEMBER PRESENTING: Louis Abi-younes, P.E., City Engineer

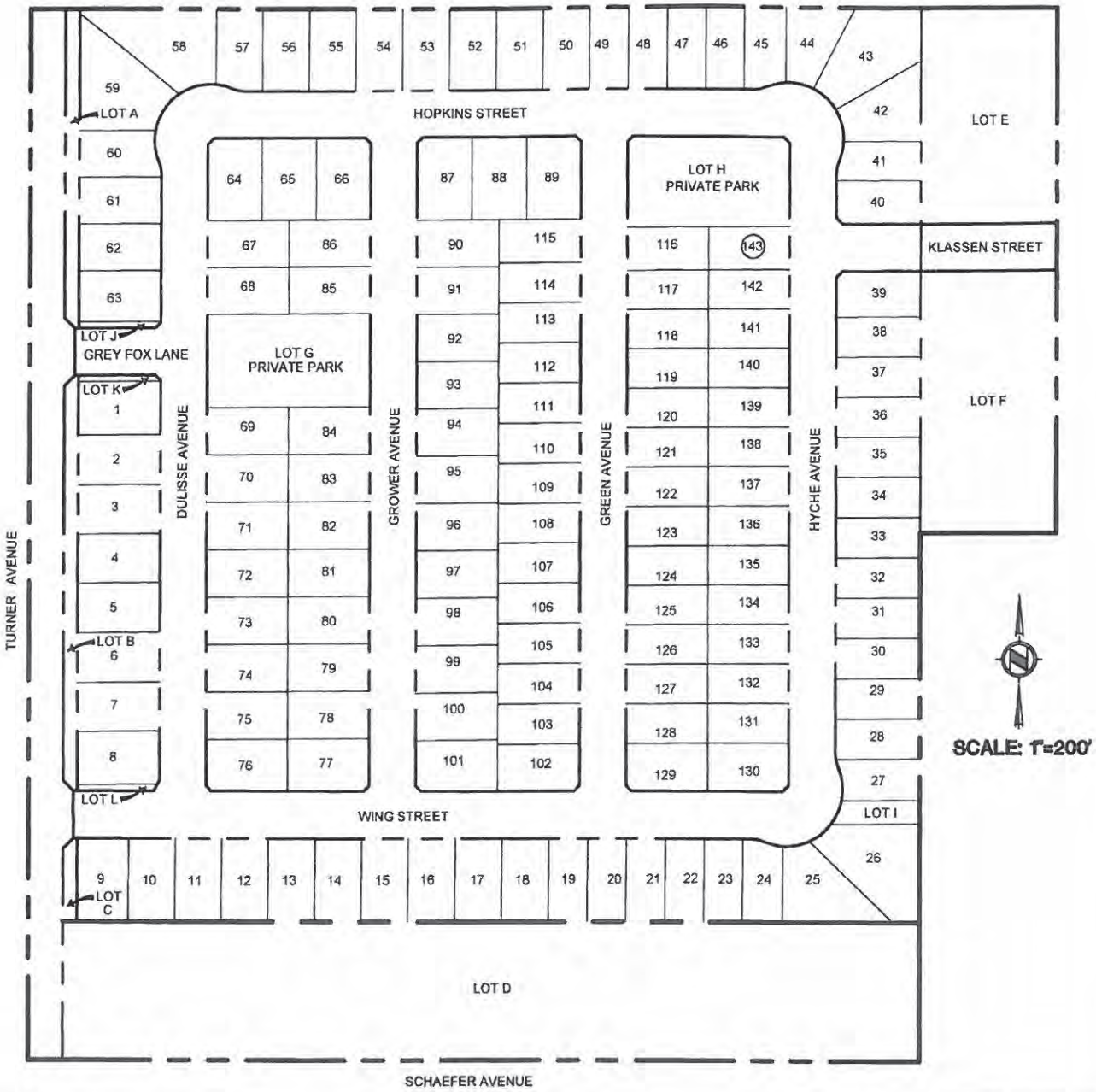
Prepared by: Dean A. Williams
Department: Engineering

City Manager Approval:

Submitted to Council/O.H.A. 02/18/2014
Approved:
Continued to:
Denied:

6

EXHIBIT I



VICINITY MAP
NTS

FUSCOE ENGINEERING
2850 Inland Empire Boulevard, Suite B
Ontario, California 91764
tel 909.581.0676 ◦ fax 909.581.0696
www.fuscoe.com

CITY OF ONTARIO **ENGINEERING DEPARTMENT**	**APPLICANT:** **LENNAR HOMES OF CALIFORNIA, INC**
FILE NO. TM 18476	**PROJECT: WESTHAVEN**

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18476 LOCATED ON THE NORTHEAST CORNER OF TURNER AVENUE AND SCHAEFER AVENUE.

WHEREAS**,** Tentative Tract Map No. 18476, submitted for approval by the developer, Armada Ontario Associates, of Newport Beach, California, was approved by the Planning Commission of the City of Ontario on July 24, 2007; and

WHEREAS, Lennar Homes of California, Inc., of Corona, California, is now the current owner and developer of the subject property; and

WHEREAS, Tentative Tract Map No. 18476 consisting of 143 numbered lots and eleven (11) lettered lots, being a subdivision of a portion of the Southwest one-quarter of the Southeast one-quarter of Section 11, Township 2 South, Range 7 West, San Bernardino Base and Meridian, according to the official plat of said land, excepting therefrom the east 175 feet thereof, is the division of land approved, as shown on Tentative Tract Map No. 18476; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Final Tract Map No. 18476, said developer has offered an Improvement Agreement, together with good and sufficient security, in conformance with the City Attorney's approved format, for approval and execution by the City; and

WHEREAS, the requirement of the preparation of Covenants, Conditions and Restrictions (CC&Rs), reviewed and approved by the City Attorney's office and the City Engineer, to ensure the right to mutual ingress and egress and continued maintenance of common facilities by the commonly affected property owners has been deferred to coincide with the timing of recordation of the Final Map of Tract No. 18476.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California, as follows:

1. That said Improvement Agreement be, and the same is, approved and the City Manager is authorized to execute same on behalf of said City, and the City Clerk is authorized to attest thereto; and

2. That said improvement security is accepted as good and sufficient, subject to approval as to form and content thereof by the City Attorney; and

3. That Final Tract Map No. 18476 be approved and that the City Clerk be authorized to execute the statement thereon on behalf of said City.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 18th day of February 2014.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 18, 2014 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2014- duly passed and adopted by the Ontario City Council at their regular meeting held February 18, 2014.

_____
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
February 18, 2014

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION APPROVING PARCEL MAP NO. 19383 LOCATED AT THE NORTHWEST CORNER OF MILLIKEN AVENUE AND LOWELL STREET

RECOMMENDATION: That the City Council adopt a resolution approving Parcel Map No. 19383 located at the northwest corner of Milliken Avenue and Lowell Street.

COUNCIL GOALS: **Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health**
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: None. All public improvements were previously constructed.

BACKGROUND: The 22.0 acre subdivision, within the California Commerce Center Specific Plan, was submitted by the owner, BMW of North America, LLC, of Woodcliff Lake, New Jersey, a Delaware Limited Liability Company (Mr. Ludwig Willisch, President and CEO). The subdivision consists of one parcel to be subdivided into three, as shown on Exhibit 1. Two existing buildings will each occupy a new parcel with the third being vacant, for future sale. All dedications and public improvements are complete from previous development. Tentative Parcel Map No. 19383 was approved by the Planning Commission on May 28, 2013.

This map meets all conditions of the Subdivision Map Act and the Ontario Municipal Code and has been reviewed and approved by the City Engineer.

STAFF MEMBER PRESENTING: Louis Abi-younes, P.E., City Engineer

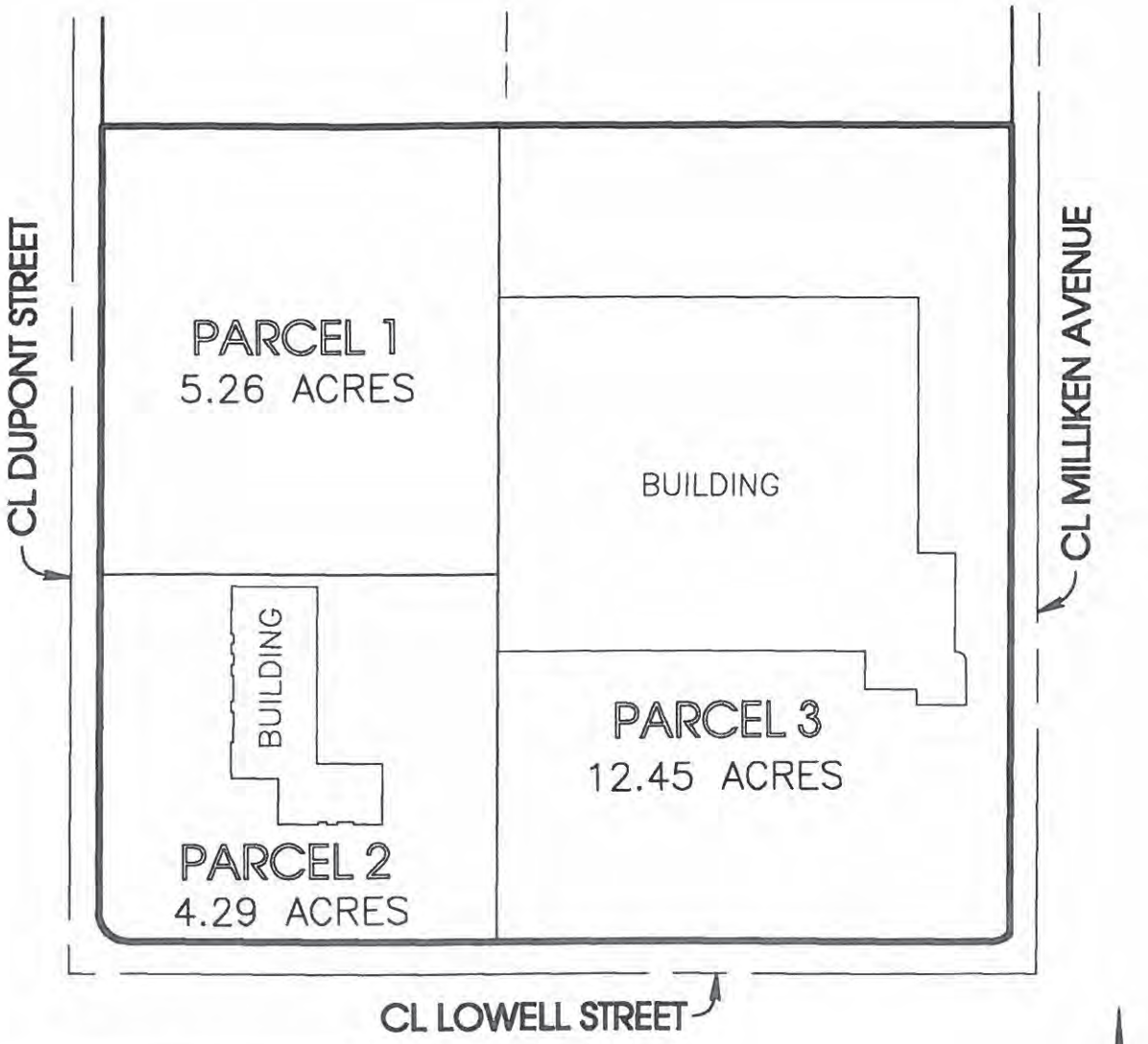
Prepared by: Dean A. Williams
Department: Engineering

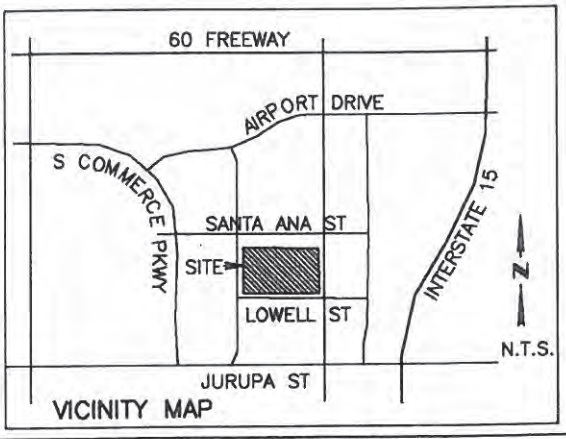
City Manager Approval:

Submitted to Council/O.H.A. 02/18/2014
Approved:
Continued to:
Denied:

7

EXHIBIT I





CITY OF ONTARIO ENGINEERING DEPARTMENT	APPLICANT: BMW OF NORTH AMERICA, LLC
FILE NO: PM 19383	PROJECT: 3 PARCEL SUBDIVISION

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING PARCEL MAP NO. 19383 LOCATED ON THE NORTHWEST CORNER OF MILLIKEN AVENUE AND LOWELL STREET.

WHEREAS**,** Tentative Parcel Map No. 19383, submitted for approval by the owner, BMW of North America, LLC, of Woodcliff Lake, New Jersey, consisting of three (3) parcels, being a subdivision of Parcel "C" as shown on the plat attached to that certain Lot Line Adjustment No. L86-14, recorded September 8, 1986, Instrument No. 86-257329, Official Records of San Bernardino County, located in Section 25, Township 1 South, Range 7 West, San Bernardino Base Meridian, was approved by the Planning Commission of the City of Ontario on May 28, 2013; and

WHEREAS, Parcel Map No. 19383 is the division of land approved, as shown on Tentative Parcel Map No. 19383; and

WHEREAS, All necessary public improvements were constructed per previous development.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California, that Parcel Map No. 19383 shall be approved and that the City Clerk be authorized to execute the statement thereon on behalf of said City.

PASSED, APPROVED, AND ADOPTED this 18th day of February 2014.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 18, 2014 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2014- duly passed and adopted by the Ontario City Council at their regular meeting held February 18, 2014.

_____
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
February 18, 2014

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION DEDICATING PORTIONS OF CITY-OWNED PARCELS ON EUCALYPTUS AND EDISON AVENUES AS RIGHTS-OF-WAY FOR PUBLIC ROAD AND UTILITY PURPOSES

RECOMMENDATION: That the City Council adopt a resolution dedicating portions of City-owned parcels on Eucalyptus Avenue (APNs: 0218-241-20 & 23) and Edison Avenue (APN: 0218-241-15) as rights-of-way for public road and utility purposes and authorize the City Manager to execute the grant deeds dedicating the properties.

COUNCIL GOALS: **Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health**
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

FISCAL IMPACT: None. The City will not incur any cost for dedicating the right-of-way for public road and utility purposes.

BACKGROUND: The City has entered into a Construction Agreement Amendment with NMC Builders, LLC to construct certain public road and utility improvements within a portion of Eucalyptus and Edison Avenues as identified in The Ontario Plan. The City does not currently have the ultimate right-of-way for Eucalyptus and Edison Avenues and is in the process of acquiring the right-of-way needed for NMC Builders, LLC to proceed with construction. Under state law, in order to create a public road, the law generally requires a right-of-way dedication of property by its owner and acceptance by the City. For the properties along Eucalyptus and Edison Avenues that are currently owned by the City, portions of the property need to be dedicated for public road and utility purposes, as shown in Exhibit 1 and as set forth in the attached resolution.

STAFF MEMBER PRESENTING: Louis Abi-younes, P.E., City Engineer

Prepared by: Khoi Do, P.E.
Department: Engineering

City Manager Approval:

Submitted to Council/O.H.A. 02/18/2014
Approved:
Continued to:
Denied:

8

The resolution authorizes the execution of grant deeds that will ensure that County assessor maps will be updated to reflect the City's ultimate right-of-way dedicated for public road and utility purposes.

The grant deeds have been reviewed and approved as to form by the City Attorney.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DEDICATING PORTIONS OF CITY-OWNED PARCELS ON EUCALYPTUS AND EDISON AVENUES AS RIGHTS-OF-WAY FOR PUBLIC ROAD AND UTILITY PURPOSES.

WHEREAS, in 1999, the City of Ontario ("City") annexed a portion of the former San Bernardino County Agricultural Preserve which is now referred to as the New Model Colony; and

WHEREAS, in accordance with The Ontario Plan, Edison Avenue is a designated arterial street which requires the creation of an expanded right-of-way; and

WHEREAS, in accordance with the Ontario Plan, Eucalyptus Avenue is a designated collector street which requires the creation of an expanded right-of-way; and

WHEREAS, the City has all rights, title and interest to a certain parcel adjacent to the existing Edison Avenue (APN: 0218-241-15) as depicted in the attached Exhibits A and B of the grant deed for Edison Avenue; and

WHEREAS, the City has all rights, title and interest to certain parcels adjacent to the existing Eucalyptus Avenue (APNs: 0218-241-20 & 23) as depicted in the attached Exhibits A and B of the grant deed for Eucalyptus Avenue; and

WHEREAS, under state law, in order to create a public road, the law generally requires a right-of-way dedication of property by its owner and acceptance by the City; and

WHEREAS, the City now seeks to dedicate a portion of these parcels, which are currently owned by the City, for public road and utility purposes; and

WHEREAS, the City Council now seeks to approve the use of the City's property for this desired purpose in order to achieve the ultimate right-of-way required to accommodate the lane configurations necessary to be in conformance with the Ontario Plan.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California:

1. The City Council of the City of Ontario hereby dedicates the property as depicted in attached grant deeds for Eucalyptus Avenue and Edison Avenue for public road and utility purposes.

2. The City Clerk shall cause the attached grant deeds, attested by the City Clerk under seal, to be executed and recorded in the office of the recorder of the County of San Bernardino. An additional purpose for these grant deeds is to ensure that future County assessor maps reflect this new expanded right-of-way dedicated for public road and utility purposes.

3. The City Manager is authorized to execute the attached grant deeds for the purposes stated herein.

4. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 18th day of February 2014.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 18, 2014 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
MARY E. WIRTES, MMC, CITY CLERK

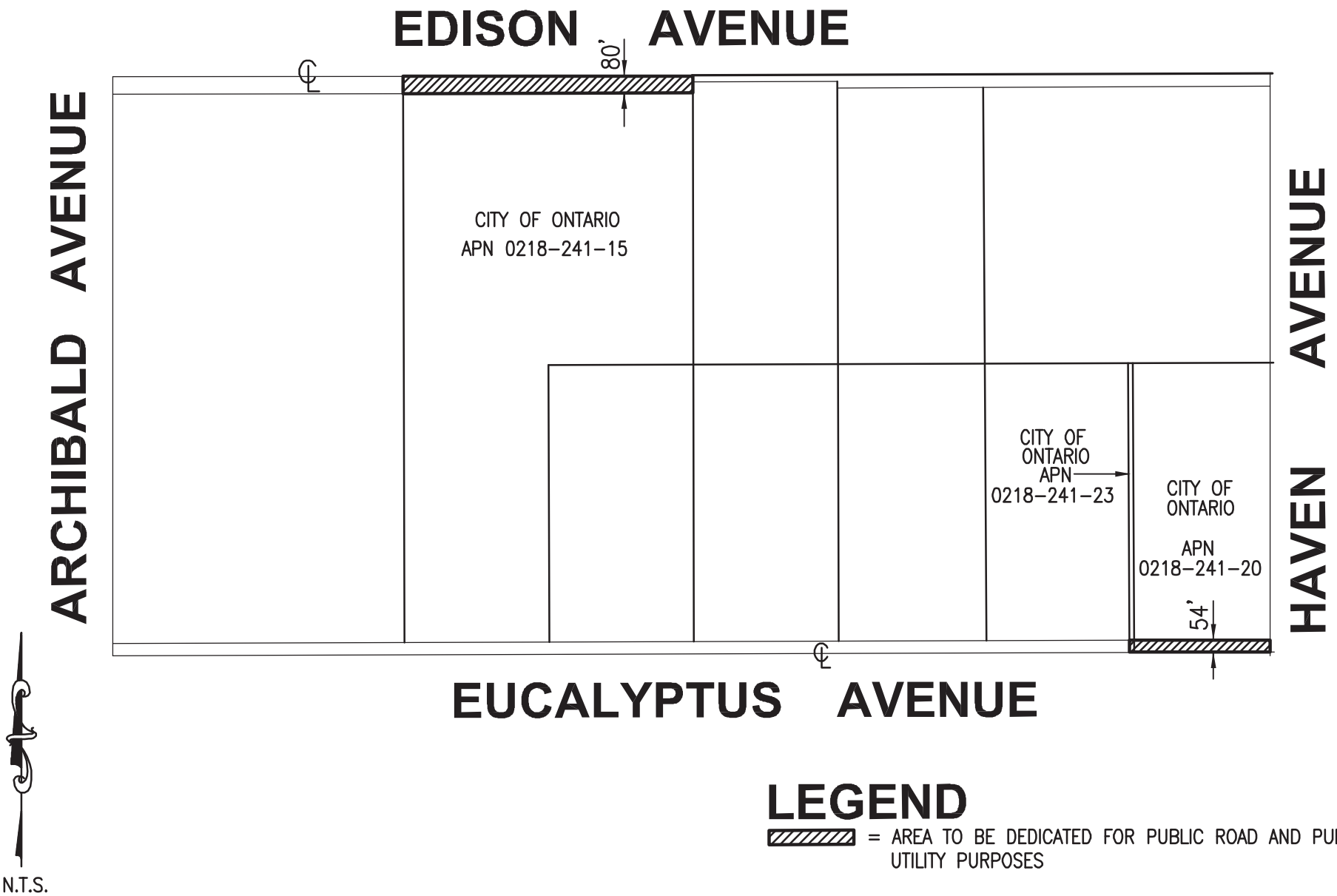
(SEAL)

The foregoing is the original of Resolution No. 2014- duly passed and adopted by the Ontario City Council at their regular meeting held February 18, 2014.

_____
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT 1



LEGEND

= AREA TO BE DEDICATED FOR PUBLIC ROAD AND PUBLIC UTILITY PURPOSES

CITY OF ONTARIO

Agenda Report
February 18, 2014

SECTION:
CONSENT CALENDAR

SUBJECT: FISCAL YEAR 2013-14 MID-YEAR BUDGET REPORT

RECOMMENDATION: That the City Council approve the budget adjustments and recommendations as listed in the Fiscal Year 2013-14 Mid-Year Budget Report.

COUNCIL GOALS: Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health
Operate in a Businesslike Manner

FISCAL IMPACT: The recommended actions will affect several fund budgets as outlined in the FY 2013-14 Mid-Year Budget Report and supporting schedules.

BACKGROUND: This is the second interim budget report for Fiscal Year 2013-14 which reflects the Administrative Services Agency's continued efforts to provide timely, accurate, and understandable financial information to assist the City Council with decision making and achieve their core goals. All funds have been reviewed in preparing this report. The emphasis of this report is on the General Fund, which funds most of the government services including public safety, recreation, library, museum, parks, building, and planning. This report also discusses budget trends and the economic outlook that may impact the City's resources.

The primary purposes of this report are to:

- Revise the City's budget to reflect the City Council's actions taken since the First Quarter Budget Report;
- Recommend personnel and organizational changes to enhance program operations and efficiency;
- Recommend budget changes to align the budget with projected year-end results;
- Recommend budget adjustments that are consistent with City Council goals and objectives; and
- Comment on significant budget trends which may impact next fiscal year's budget development.

STAFF MEMBER PRESENTING: Grant D. Yee, Administrative Services/Finance Director

Prepared by: Doreen M. Nunes
Department: Fiscal Services

City Manager Approval:

Submitted to Council/O.H.A. 02/18/2014
Approved:
Continued to:
Denied:

9

Mid-Year Budget Recommendations
Mid-Year Budget recommendations are routine in nature and mainly comprised of previously approved City Council actions, adjustments in the revenue budget to reflect estimates based on current trends, and additional appropriations for new or ongoing programs/projects. For the General Fund, the proposed actions will result in a net increase of $64,097, slightly increasing the estimated ending fund balance to $37,366,946 – approximately 22.3 percent of the General Fund operating budget, which exceeds the 18 percent reserve goal.

Major budgetary items reflected in the Mid-Year include: $200,000 to reflect increases in Development Related revenues; $45,000 for the installation of restroom doors at several City parks and services to lock/unlock the restroom doors at all City parks; and $43,879 for a reimbursement agreement relating to the electronic LED sign easement at the auto center.

Noteworthy budget adjustments in Other Funds include: $375,000 for pavement rehabilitation on Francis Avenue; $344,900 for installation of a traffic signal at Campus Avenue and Philadelphia Street (award of $317,700 from the Highway Safety Improvement Program); $335,700 for an upgrade to the public safety dispatch/mobile systems; $311,900 for installation of a traffic signal at Baker Avenue and 6th Street (award of $278,000 from the Highway Safety Improvement Program); and $150,000 for improvements to the police wire tap, armory, and weapons storage rooms.

Quarterly budget reports also present recommendations for current personnel and organizational changes necessary to enhance program operations and efficiency. Current recommendations include one additional position for the Development Agency to assist with the increase in development related activity, which result in an expenditure increase to the General Fund of $26,024 for the balance of Fiscal Year 2013-14 (annual impact to the General Fund of $78,072).

Economic Outlook
The local economy is continuing to show signs of improvement, with the continued growth in the housing and job markets, and consumer spending. Home values are rebounding, home sales are increasing, and new construction is strengthening. The solid growth in the job market indicates the economy is reviving. California and the Inland Empire unemployment rate dropped to 8.3 percent and 8.9 percent, respectively, in December; the lowest rate since 2008. Consumer Confidence is improving with the favorable economic and labor market conditions.

Although the economy is improving, there are still concerns relating to the continuing progress. The housing recovery will be tested in the upcoming year with higher mortgage rates and home prices. The key to sustaining consumer spending will be continued job and wage growth. The economy is trending in the right direction; however, federal fiscal constraints and the debt ceiling are potential negative impacts on the economy.

In addition, the declining passenger traffic at the Ontario International Airport is of upmost concern for the City. The airport has lost over 40 percent of passenger traffic since 2007, which equates to a loss of approximately $540 million dollars of regional economic impact and over 10,000 local jobs. The transfer of Ontario Airport management decisions to local control is in the best interest for the region and will help the Airport regain its status as the economic engine for the Inland Empire while ensuring sufficient airport capacity in the long-term for all of Southern California.

CalPERS
The California State Public Employees Retirement System (CalPERS) is considerably underfunded, primarily due to lower than projected earning rates combined with significant investment losses incurred

during the Great Recession. All of this has contributed to dramatic increases to the City's CalPERS contribution rates. With the recent adoption of amortization and smoothing policy changes by the CalPERS Board to address the severity of the underfunding, significant employer contribution rate increases will begin in Fiscal Year 2014-15. CalPERS' proposed rates will increase by approximately 50 percent by Fiscal Year 2019-20. These rates are dependent upon CalPERS earning a 7.5 percent return on their investments in the future.

Conclusion

In summary, while the City is experiencing improvement during the economic recovery, challenges still remain. The economy is projected to grow slowly over the next couple of years due to a continued sluggish job market, the potential negative impact to the economy resulting from the federal deficit, and the Federal Reserve's potential actions to begin tapering back its bond purchases (quantitative easing) which has kept borrowing costs low. The City still needs to be attentive during this economic recovery stage to ensure that the City of Ontario is positioned to take advantage of opportunities in the next economic growth cycle.

The Adopted Operating Budget for FY 2013-14, as modified through this Mid-Year Budget Report, continues to reflect the City Council's commitment to foster steady, controlled growth and to provide the highest level of service to the community within the City's fiscal constraints. With the City Council's leadership and their prudent fiscal policies, the City's long-term fiscal health will further solidify its standing as the economic leader in the Inland Empire, and a formidable player in California and the nation.

CITY OF ONTARIO

Agenda Report
February 18, 2014

SECTION:
CONSENT CALENDAR

SUBJECT: RESOLUTIONS APPROVING THE THIRD AMENDMENT TO THE HOME PROGRAM PARTICIPATION AGREEMENT AMONG MERCY HOUSE LIVING CENTERS, ONTARIO HOUSING AUTHORITY, AND THE CITY OF ONTARIO RELATED TO GUADALUPE RESIDENCE

RECOMMENDATION: That the City Council and the Board of the Ontario Housing Authority adopt resolutions approving the Third Amendment to the HOME Program Participation Agreement with Mercy House Living Centers Inc. of Santa Ana, CA (on file with the Records Management Department), related to the property located at 412 North Parkside Avenue.

COUNCIL GOALS: **Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health**
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: A HOME Program Participation Agreement ("Agreement") was executed among Mercy House Living Centers, Inc. ("Mercy House"), Ontario Housing Authority, and City of Ontario on June 4, 2013. This Agreement provided a loan, in the amount of $1,307,022, to Mercy House Living Centers, Inc. for the acquisition, rehabilitation, and operation of a multi-family property, located at 412 North Parkside Avenue. Funding for this loan was provided through the U.S. Department of Housing and Urban Development (HUD) HOME Investment Partnership Program (HOME). The loan is an interest-free, residual receipts note with a 30-year term. The Third Amendment adds $216,836 of HOME Program funds to the loan for a total loan amount of $1,523,858.

This property is currently owned by the Authority and its sale will generate approximately $1,000,000 in net proceeds that will be available for use with other new housing related activities. This property was appraised by a certified general real estate appraiser who concluded that the sales price of $1,000,000 was reasonable. Authority staff will also provide construction management services during the rehabilitation period and will charge a construction management fee, in the amount of 10% of the rehabilitation budget. No General Fund monies will be used for this project.

STAFF MEMBER PRESENTING: Brent Schultz, Housing & Municipal Services Director

Prepared by: Katryna Gonzalez
Department: Housing Agency

City Manager Approval:

Submitted to Council/O.H.A. 02/18/2014
Approved:
Continued to:
Denied:

10

BACKGROUND: On May 3, 2005, the City Council approved the Continuum of Care ("Continuum"). The Continuum was designed to provide a comprehensive approach to addressing homelessness within Ontario and includes the following components: a homeless outreach service center, a 34-bed transitional housing facility, 62 permanent affordable housing units, and aftercare services.

The Guadalupe Residence, located at 411 and 412 North Parkside Avenue, was rehabilitated and leased to Mercy House in May 2005 to create 15 of the 62 permanent housing units within the Continuum. This property consists of 15 4-bedroom units all restricted for moderate-income households. Given funding restrictions at the time, the rehabilitation was limited. The current lease expires June 30, 2015.

On June 4, 2013, the City Council approved the Agreement between Mercy House Living Centers, Inc., Ontario Housing Authority, and City of Ontario for a loan in the amount of $1,307,022 to acquire and rehabilitate the property at 412 North Parkside Avenue. The acquisition price is $1,000,000. The First and Second Amendment provided extensions of the escrow closing date.

Bids were solicited by Mercy House Living Centers, Inc. for the rehabilitation portion of the project. Mercy House received three bids which exceed the original funding amount available for the rehabilitation. The bids received were as follows:

Company	Location	Base Bid	Recommended Alternates (2, 3, 4, and 8)	TOTAL
4 Diamond Contractors, Inc.	Corona	$377,808	$17,627	$395,435
4 Ace Construction, Inc.	Rancho Cucamonga	$463,651	$38,759	$502,410
CJ Pro, Inc.	Brea	$698,000	$66,000	$764,000

The recommended alternates include the following items:

- Alternate 2 – Installation of window coverings;
- Alternate 3 – Remove and replace front yard wrought iron fencing and gates;
- Alternate 4 – Remove chain link fencing from rear pedestrian walkway and replace with wrought iron fencing; and
- Alternate 8 – Remove and replace ceiling fans within dining area.

The Third Amendment adds $216,836 of HOME funds to the existing agreement. Staff believes that the additional funding recommendation is warranted to address the physical needs of the building and limited future maintenance issues. The estimated total project cost for the acquisition and rehabilitation of 412 North Parkside Avenue by Mercy House Living Centers is $1,523,858. Funding for this project will be provided through a loan from the City to Mercy House Living Centers, utilizing federal HOME funds. A detailed budget breakdown is shown in Exhibit A. Escrow is scheduled to close by February 28, 2014. Construction will begin upon escrow closing and is scheduled to be completed within six months. All other terms of the original agreement remain in effect.

EXHIBIT A

GUADALUPE RESIDENCE
412 NORTH PARKSIDE AVENUE
ESTIMATED BUDGET

Item	**Amount**
Sales Price	$1,000,000
Soft Costs	$19,565
Relocation	$10,000
OHA Construction Management Fee (10%)	$39,543
Construction	$395,435
Contingency (15%)	$59,315
TOTAL	**$1,523,858**

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A THIRD AMENDMENT TO THE HOME PROGRAM PARTICIPATION AGREEMENT WITH THE ONTARIO HOUSING AUTHORITY AND MERCY HOUSE LIVING CENTERS REGARDING PROPERTY LOCATED AT 412 N. PARKSIDE AVENUE.

WHEREAS, the Ontario Housing Authority (the "Authority") and Mercy House Living Centers, a nonprofit corporation ("Mercy House"), are party to that certain Lease Agreement, dated as of May 3, 2005, as amended by that certain First Amendment thereto dated as of July 18, 2006, and that certain Second Amendment to Lease Agreement dated as of June 4, 2013 (the "Lease Agreement"), regarding property commonly known as 411 & 412 N. Parkside Avenue (the "Property");and

WHEREAS, pursuant to the Lease Agreement and in furtherance of its public purposes of increasing, improving and preserving the supply of affordable housing in the community: (a) Authority leases the Property to Mercy House, and (b) Mercy House operates the Property as affordable rental housing for low-income and previously homeless families as part of the Homeless Services Continuum of Care Program (the "Continuum"); and

WHEREAS, in order to improve 412 N. Parkside Avenue and operation of both the Property and the Continuum, Authority, Mercy House and the City of Ontario (the "City") entered into that certain HOME Program Participation Agreement [Guadalupe Residence/412 N. Parkside Avenue, Ontario, California] dated as of June 4, 2013 (the "HOME Agreement") pursuant to which: (a) Authority agreed to sell 412 N. Parkside Avenue to Mercy House at its fair market value, (b) Mercy House agreed to rehabilitate 412 N. Parkside Avenue (the "Rehabilitation"), (c) City agreed to finance such sale and rehabilitation with the loan of HOME Program funds to Mercy House (the "HOME Loan"), and (d) Mercy House agreed to continue to operate the Property as affordable rental housing; and

WHEREAS, the HOME Agreement has heretofore been amended by that certain First Amendment thereto dated as of November 21, 2013 and that certain Second Amendment thereto dated as of January 13, 2014 (the "HOME Agreement"); and

WHEREAS, the parties now propose to enter into that certain Third Amendment to the HOME Agreement, dated as of February 18, 2014 (a copy of which is on file in the office of the City Clerk) (the "Third Amendment"), in order to revise the budget for the Rehabilitation and to increase the principal amount of the HOME Loan in order to cover such budget revision; and

WHEREAS, the City Council has duly considered all of the terms and conditions of the Third Amendment and believes that the implementation thereof is in the best interests of the community and the health, safety and welfare of its residents; and is in accord with the public purposes and provisions of applicable State and local law and requirements.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ontario as follows:

1. The City Council hereby ratifies the First and Second Amendments to the HOME Agreement.

2. The City Council hereby approves the Third Amendment to the HOME Agreement and authorizes the City Manager or his designee to (a) make any minor modifications thereto he deems necessary or desirable, (b) execute the Third Amendment, and (c) take all actions he deems necessary or desirable to implement the HOME Agreement as amended by the First, Second and Third Amendments, including, without limitation, executing any and all documents or instruments connected therewith. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 18th day of February 2014.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 18, 2014 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2014- duly passed and adopted by the Ontario City Council at their regular meeting held February 18, 2014.

_____
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE ONTARIO HOUSING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING OF A THIRD AMENDMENT TO THE HOME PROGRAM PARTICIPATION AGREEMENT WITH THE CITY OF ONTARIO AND MERCY HOUSE LIVING CENTERS REGARDING PROPERTY LOCATED AT 411 & 412 N. PARKSIDE AVENUE.

WHEREAS, the Ontario Housing Authority (the "Authority") and Mercy House Living Centers, a nonprofit corporation ("Mercy House"), are party to that certain Lease Agreement, dated as of May 3, 2005, as amended by that certain First Amendment thereto dated as of July 18, 2006, and that certain Second Amendment to Lease Agreement dated as of June 4, 2013 (the "Lease Agreement"), regarding property commonly known as 411 & 412 N. Parkside Avenue (the "Property"); and

WHEREAS, pursuant to the Lease Agreement and in furtherance of its public purposes of increasing, improving and preserving the supply of affordable housing in the community: (a) Authority leases the Property to Mercy House, and (b) Mercy House operates the Property as affordable rental housing for low-income and previously homeless families as part of the Homeless Services Continuum of Care Program (the "Continuum"); and

WHEREAS, in order to improve 412 N. Parkside Avenue and operation of both the Property and the Continuum, Authority, Mercy House and the City of Ontario (the "City") entered into that certain HOME Program Participation Agreement [Guadalupe Residence/412 N. Parkside Avenue, Ontario, California] dated as of June 4, 2013 (the "HOME Agreement") pursuant to which: (a) Authority agreed to sell 412 N. Parkside Avenue to Mercy House at its fair market value, (b) Mercy House agreed to rehabilitate 412 N. Parkside Avenue (the "Rehabilitation"), (c) City agreed to finance such sale and rehabilitation with the loan of HOME Program funds to Mercy House (the "HOME Loan"), and (d) Mercy House agreed to continue to operate the Property as affordable rental housing; and

WHEREAS, the HOME Agreement has heretofore been amended by that certain First Amendment thereto dated as of November 21, 2013 and that certain Second Amendment thereto dated as of January 13, 2014 (the "HOME Agreement"); and

WHEREAS, the parties now propose to enter into that certain Third Amendment to the HOME Agreement, dated as of February 18, 2014 (a copy of which is on file in the office of the City Clerk) (the "Third Amendment"), in order to revise the budget for the Rehabilitation and to increase the principal amount of the HOME Loan in order to cover such budget revision; and

WHEREAS, the Authority has duly considered all of the terms and conditions of the Third Amendment and believes that the implementation thereof is in the best interests of the community and the health, safety and welfare of its residents; and is in accord with the public purposes and provisions of applicable State and local law and requirements.

NOW, THEREFORE, BE IT RESOLVED by the Ontario Housing Authority as follows:

1. The Authority hereby ratifies the First and Second Amendments to the HOME Agreement.

2. The Authority hereby approves the Third Amendment to the HOME Agreement and authorizes the City Manager or his designee to (a) make any minor modifications thereto he deems necessary or desirable, (b) execute the Third Amendment, and (c) take all actions he deems necessary or desirable to implement the HOME Agreement as amended by the First, Second and Third Amendments, including, without limitation, executing any and all documents or instruments connected therewith.

The Secretary of the Ontario Housing Authority shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 18th day of February 2014.

_____
PAUL S. LEON, CHAIRMAN

ATTEST:

_____
MARY E. WIRTES, AUTHORITY SECRETARY

APPROVED AS TO FORM:

_____
AUTHORITY COUNSEL

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, Secretary of the Ontario Housing Authority, DO HEREBY CERTIFY that the foregoing Resolution No. OHA- was duly passed and adopted by the Board Members of the Ontario Housing Authority at their regular meeting held February 18, 2014 by the following roll call vote, to wit:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

_____
MARY E. WIRTES, AUTHORITY SECRETARY

(SEAL)

The foregoing is the original of Resolution No. OHA duly passed and adopted by the Ontario Housing Authority at their regular meeting held February 18, 2014.

_____
MARY E. WIRTES, AUTHORITY SECRETARY

(SEAL)

CITY OF ONTARIO

Agenda Report
February 18, 2014

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN OPERATING COVENANT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND PAG ONTARIO B1 INC.

RECOMMENDATION: That the City Council approve a resolution authorizing the City Manager to execute a ten year Operating Covenant Agreement and all other necessary documentation by and between the City of Ontario and PAG Ontario B1 Inc., a Delaware Corporation, related to the expansion and continued operation of automobile sales and service businesses.

COUNCIL GOALS: **Develop Strategies and Take Action, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health**
Invest in the Growth and Evolution of the City's Economy

FISCAL IMPACT: The Operating Covenant Agreement is for a period of up to ten years in an amount equal to fifty percent (50%) of all sales tax revenue in excess of $650,000 per year that is generated from the business site, not to exceed $2,000,000.

BACKGROUND: PAG Ontario B1 Inc., a Delaware Corporation ("PAG"), currently leases property located at 1251 Auto Center Drive and 1301 Auto Center Drive. They currently operate two automobile dealerships and service businesses known as MINI of Ontario and BMW of Ontario. In order to expand the operation of their businesses, PAG is pursuing a lease of and significant improvements to an additional property located at 1350 South Auto Center Drive.

The lease of the additional property and the expansion of the businesses into renovated facilities would result in benefits to the City of Ontario and its citizens including; the creation of several new employment opportunities, increased property tax revenues, sales tax revenue generation, and other ancillary benefits. As an incentive for the expansion and operation of the businesses within the City of Ontario and to assist with the leasing of the additional property, the City proposes to enter into an Operating Covenant Agreement for a period of up to ten years in an amount equal to fifty percent (50%)

STAFF MEMBER PRESENTING: John Andrews, Economic Development Director

Prepared by: Megan Hebdon
Department: Economic Development

Submitted to Council/O.H.A. 02/18/2014
Approved:
Continued to:
Denied:

City Manager
Approval:

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of all sales tax revenue in excess of $650,000 per year that is generated from the business site, not to exceed $2,000,000. The approval of the Agreement is categorically exempt from further CEQA review pursuant to State CEQA Guidelines Section 15061(b)(3) and Section 3.07 of the City's Local CEQA Guidelines, since it can be seen with certainty that there is no possibility that the approval of the Agreement alone may have a significant effect on the environment.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN OPERATING COVENANT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND PAG ONTARIO B1, INC.

WHEREAS, PAG Ontario B1, Inc., a Delaware corporation ("Tenant"), currently leases property located 1251 Auto Center Drive and 1301 Auto Center Drive, in the City of Ontario, California, on which Tenant currently operates two automobile dealership and service businesses more commonly referred to as MINI of Ontario and BMW of Ontario (collectively, the "Businesses"); and

WHEREAS, Tenant desires to also lease that certain real property located at 1350 S. Auto Center Drive, in the City of Ontario, California ("Property"), which is located across the street from the current location of the Businesses (1251 Auto Center Drive, 1301 Auto Center Drive and 1350 S. Auto Center Drive, in the City of Ontario, California are collectively referred to as the "Business Site"), but it is not financially feasible to do so at this time based on the current market rental value of the Property; and

WHEREAS, the City has determined that Tenant's lease of the Property and expansion of the Businesses to the Property would result in substantial benefits to the City and its citizens including, without limitation, the creation of significant new numbers of employment opportunities, property tax revenues, sales tax revenues and other ancillary benefits; and

WHEREAS, the City has further determined that the expansion of the Businesses to the Property serves the additional public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom; and

WHEREAS, based on information provided by City staff, and other such written and oral evidence as presented to the City, the City finds and determines that the expansion of the Businesses to the Property is reasonably related to a legitimate governmental purpose in that the expanded Businesses will assist the City in its goal of furthering the development of the community; and

WHEREAS, as an incentive for the expansion and operation of the Businesses within the City, and to assist Tenant with the leasing of the Property, Tenant has requested financial assistance from the City for a period of up to ten (10) years in an amount equal to fifty percent (50%) of all sales tax revenue in excess of $650,000 per year that is generated from the Business Site, not to exceed $2,000,000; and

WHEREAS, City and Tenant have negotiated the terms of an Operating Covenant Agreement (BMW/MINI of Ontario) ("Agreement"), a copy of which is attached to this Resolution as Exhibit A, to assist Tenant with the expansion of the Businesses to the Property; and

WHEREAS, in accordance with Government Code Section 53083, the City provided certain information in written form to the public and on its website at www.ci.ontario.ca.us, and held a noticed public hearing on February 18, 2014 to consider all written and oral comments on the Agreement; and

WHEREAS, the City has determined that the approval of the Agreement is categorically exempt from further CEQA review pursuant to State CEQA Guidelines Section 15061(b)(3) and Section 3.07 of the City's Local CEQA Guidelines, since it can be seen with certainty that there is no possibility that the approval of the Agreement alone may have a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct, and are incorporated into this Resolution by reference as though fully set forth herein.

SECTION 2. Findings. The City Council additionally finds and determines that: (a) there are identifiable public purposes fulfilled by the Agreement, as set forth in the Recitals; (b) the public purposes set forth in the Recitals outweigh the private benefit to private persons; and (c) the findings set forth in this Resolution are based upon substantial written and oral evidence presented to the City Council.

SECTION 3. Authorization. The City Council finds and determines that the Agreement is authorized by law and constitutes a valid and binding agreement between City and Tenant.

SECTION 4. Approval. The City Council hereby approves the Agreement in substantially the form attached to this Resolution as Exhibit A. The City Council hereby authorizes the City Manager, with the concurrence of the City Attorney, to execute and deliver on behalf of the City the Agreement and such other documents and instruments as may be necessary or convenient in furtherance of the actions authorized in this Resolution.

SECTION 5. CEQA Compliance. City staff is hereby authorized and directed to file a Notice of Exemption with the Clerk of the Board of Supervisors of County of San Bernardino, within five (5) calendar days following the adoption of this Resolution.

SECTION 6. Effective Date. This Resolution shall become effective upon its adoption.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 18th day of February 2014.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 18, 2014 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2014- duly passed and adopted by the Ontario City Council at their regular meeting held February 18, 2014.

_____
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT A
OPERATING COVENANTS AGREEMENT
(BMW/MINI of Ontario)

[Attached behind this cover page]

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

City of Ontario
303 E. B Street
Ontario, California 91764
Attn: Economic Development Director

Space above line for Recorder's use only
Exempt from recording fees per Govt. Code § 27383
Exempt from Documentary Transfer Tax per Rev. & Tax. Code § 11911

CITY OF ONTARIO

OPERATING COVENANT AGREEMENT
(BMW/MINI of Ontario)

This Operating Covenant Agreement (BMW/MINI of Ontario) ("Covenant Agreement") is dated _____, 2014, for reference purposes only and is entered into by and between the CITY OF ONTARIO, a California municipal corporation ("City"), and PAG ONTARIO B1, INC., a Delaware corporation ("Tenant"). City and Tenant enter into this Covenant Agreement with reference to the following recited facts (each a "Recital"):

RECITALS

A. Tenant leases property located 1251 Auto Center Drive and 1301 Auto Center Drive, in the City of Ontario, California, on which Tenant currently operates two automobile dealership and service businesses more commonly referred to as MINI of Ontario and BMW of Ontario (collectively, the "Businesses").

B. Tenant desires to also lease that certain real property located at 1350 S. Auto Center Drive, in the City of Ontario, California ("Property"), which is located across the street from the current location of the Businesses (1251 Auto Center Drive, 1301 Auto Center Drive and 1350 S. Auto Center Drive, in the City of Ontario, California are collectively referred to herein as the "Business Site").

C. Tenant desires to lease the Property in order to expand the operation of the Businesses but it is not financially feasible to do so at this time based on the current market rental value of the Property.

D. The City has determined that Tenant's lease of the Property and expansion of the Businesses to the Property would result in substantial benefits to the City and its citizens including, without limitation, the creation of significant new numbers of employment opportunities, property tax revenues, sales tax revenues and other ancillary benefits. Accordingly, the City has also determined that its entry into this Covenant Agreement serves a significant public purpose, while providing only incidental benefits to a private party.

E. As an incentive for the expansion and operation of the Businesses within the City, and to assist Tenant with the leasing of the Property, Tenant has requested financial assistance from the City for a period of up to ten (10) years in an amount equal to fifty percent (50%) of all sales tax revenue in excess of $650,000 per year that is generated from the Business Site, not to exceed $2,000,000, subject to the limitations set forth in this Covenant Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND COVENANTS SET FORTH IN THIS COVENANT AGREEMENT, CITY AND TENANT AGREE, AS FOLLOWS:

TERMS

1. EFFECTIVE DATE; PARTIES; DEFINITIONS

1.1 Effective Date of Covenant Agreement. This Covenant Agreement will not become effective until the date ("Effective Date") on which all of the following are true:

1.1.1 This Covenant Agreement has been approved and executed by the appropriate authorities of Tenant, as defined herein, and delivered to the City;

1.1.2 Following all legally required notices and hearings, this Covenant Agreement has been approved by the City Council; and

1.1.3 This Covenant Agreement has been executed by the appropriate authorities of the City and delivered to Tenant.

The Effective Date shall be confirmed in writing by the parties.

If all of the foregoing conditions precedent have not been satisfied by [INSERT DATE], then this Covenant Agreement may not thereafter become effective and any prior signatures and approvals of the Parties will be deemed void and of no force or effect, unless the date set forth in this paragraph is extended by written agreement of the representatives of Tenant and City.

1.2 Parties to Covenant Agreement.

1.2.1 The City. Notices shall be sent to the City as follows:

To the City:	City of Ontario Attn: City Manager 303 East B Street Ontario, CA 91764
With a copy to:	Best Best & Krieger LLP Attn: Ontario City Attorney 2855 E. Guasti Road, Suite 400 Ontario, CA 91761

1.2.1.1 The City represents and warrants to Tenant that, to the City's actual current knowledge:

(a) The City is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the laws of the State of California;

(b) The City has taken all actions required by law to approve the execution of this Covenant Agreement;

(c) The City's entry into this Covenant Agreement and/or the performance of the City's obligations under this Covenant Agreement does not violate any contract, agreement or other legal obligation of the City;

(d) The City's entry into this Covenant Agreement and/or the performance of the City's obligations under this Covenant Agreement does not constitute a violation of any state or federal statute or judicial decision to which the City is subject;

(e) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of the City's obligations under this Covenant Agreement;

(f) The City has the legal right, power and authority to enter into this Covenant Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Covenant Agreement has been duly authorized and no other action by the City is requisite to the valid and binding execution, delivery and performance of this Covenant Agreement, except as otherwise expressly set forth herein; and

(g) The individual executing this Covenant Agreement is authorized to execute this Covenant Agreement on behalf of the City.

1.2.1.2 The representations and warranties set forth above are material consideration to Tenant and the City acknowledges that Tenant is relying upon the representations set forth above in undertaking Tenant's obligations set forth in this Covenant Agreement.

1.2.1.3 As used in this Covenant Agreement, the term "City's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of the City Manager as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

1.2.1.4 All of the terms, covenants and conditions of this Covenant Agreement shall be binding on and shall inure to the benefit of the City and its nominees, successors and assigns.

1.2.2 Tenant. Notices shall be sent to Tenant as follows:

To Tenant: PAG Ontario B1, Inc.
Attn: Bernie Wolfe, Chairman
7015 E. Chauncey Lane
Phoenix, AZ 85054

With copies to: Penske Automotive Group, Inc.
Attn: General Counsel
2555 Telegraph Road
Bloomfield Hills, MI 48302

Ballard Spahr LLP
Attn: Stephen M. Savage, Esq.
1 East Washington Street, Suite 2300
Phoenix, AZ 85004

1.2.2.1 Tenant represents and warrants to the City that, to its actual current knowledge:

(a) Tenant is a duly formed Delaware corporation, qualified and in good standing to do business under the laws of the State of California;

(b) The individual(s) executing this Covenant Agreement is/are authorized to execute this Covenant Agreement on behalf of Tenant;

(c) Tenant has taken all actions required by law to approve the execution of this Covenant Agreement;

(d) Tenant's entry into this Covenant Agreement and/or the performance of its obligations under this Covenant Agreement does not violate any contract, agreement or other legal obligation of Tenant;

(e) Tenant's entry into this Covenant Agreement and/or the performance of its obligations under this Covenant Agreement does not constitute a violation of any state or federal statute or judicial decision to which Tenant is subject;

(f) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of Tenant's obligations under this Covenant Agreement;

(g) Tenant has the legal right, power and authority to enter into this Covenant Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Covenant Agreement have been duly authorized and no other action by Tenant is requisite to the valid and binding execution, delivery and performance of this Covenant Agreement, except as otherwise expressly set forth herein; and

(h) Tenant has executed a lease agreement for the Property for a period of no less than ten (10) years, a copy of which has been provided to the City; provided, however, that the lease agreement contains a provision authorizing Tenant to terminate the lease

agreement within sixty (60) days after signing based on Tenant's finding pursuant to its due diligence investigations. In the event that Tenant terminates the lease agreement during this sixty day period based on its due diligence investigations, this Covenant Agreement shall automatically terminate.

1.2.2.2 The representations and warranties set forth herein are material consideration to the City and Tenant acknowledges that the City is relying upon the representations set forth above in undertaking the City's obligations set forth above.

1.2.2.3 As used in this Covenant Agreement, the term "actual current knowledge of Tenant" shall mean, and shall be limited to, the actual current knowledge of George W. Brochick, as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

1.2.2.4 All of the terms, covenants and conditions of this Covenant Agreement shall be binding on and shall inure to the benefit of Tenant and its permitted nominees, successors and assigns. Wherever the term "Tenant" is used herein, such term shall include any permitted nominee, assignee, successor, or subtenant of Tenant.

1.2.2.5 The qualifications and identity of PAG Ontario B1, Inc. are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Covenant Agreement with PAG Ontario B1, Inc. No voluntary or involuntary successor-in-interest of PAG Ontario B1, Inc. shall acquire any rights or powers under this Covenant Agreement without the City's prior written consent, which consent shall not be unreasonably withheld or delayed.

1.2.3 The City and Tenant are sometimes individually referred to as "Party" and collectively as "Parties."

1.3 Definitions.

1.3.1 "**Base Amount**" means the amount of Six Hundred Fifty Thousand Dollars ($650,000) in Sales Tax received by the City from the Property during each calendar year.

1.3.2 "**Businesses**" means the operation of MINI of Ontario and BMW of Ontario on the Business Site as a permanent new and pre-owned automobile sales dealership with related service and parking and other ancillary functions, in accordance with the terms and conditions of this Covenant Agreement. The Businesses shall be operated pursuant to an agreement with the manufacturer of BMW and MINI automobiles for sales and service of new and pre-owned automobiles, or pursuant to an agreement with another manufacturer of automobiles, which manufacturer has been approved by the City, in its reasonable discretion, in addition to the sale of parts for such brand(s) of automobiles and related sales of pre-owned automobiles.

1.3.3 "**Business Activities**" means and refers to activities of Tenant on the Business Site, over the internet, or otherwise that result in the sale or lease of any tangible

personal property (including, but not limited to, new and used automobiles) through the Businesses where such sale or lease is subject to sales or use tax pursuant to the Sales Tax Law.

1.3.4 "**City**" means the City of Ontario, a California municipal corporation, and any nominee, assignee of, or successor to, its rights, powers and responsibilities.

1.3.5 "**Operating Year**" means and refers to the twelve (12) month period starting on the Effective Date and each consecutive subsequent twelve (12) month period until the 10th anniversary of the Effective Date. Each Operating Year may be referred to in this Covenant Agreement in numerical succession as "Operating Year 1," "Operating Year 2" and so on up to "Operating Year 10."

1.3.6 "**Covenant Payment(s)**" means those contingent payments to be made by the City to the Tenant pursuant to Section 2.2 of this Covenant Agreement for the purchase of the Covenants and Tenant's timely and faithful performance thereunder.

1.3.7 "**Covenants**" means those covenants described in Section 2.1 herein.

1.3.8 "**Eligibility Period**" means the period commencing as of the first (1st) day of Operating Year 1 and ending on the last day of Operating Year 10.

1.3.9 "**Liquidated Damages**" means, for purposes of Section 2.7, as follows:

1.3.9.1 If the breach occurs during Operating Years 1 through 5, an amount equal to sixty-six percent (66%) of the Covenant Payments paid to Tenant at any time prior to the Operating Year in which the breach occurs.

1.3.9.2 If the breach occurs during Operating Years 6 through 10, an amount equal to thirty-three percent (33%) of the Covenant Payments paid to Tenant at any time prior to the Operating Year in which the breach occurs.

1.3.10 "**Penalty Assessments**" means and refers to penalties, assessments, collection costs and other costs, fees or charges resulting from late or underpaid payments of Sales Tax and which are levied, assessed or otherwise collected from Tenant.

1.3.11 "**Property**" means that certain real property located at 1350 S. Auto Center Drive, Ontario, California.

1.3.12 "**Sales Tax**" means and refers to all sales and use taxes levied under the authority of the Sales Tax Law attributable to the Business Activities excluding that which is to be refunded to Tenant because of an overpayment of such tax.

1.3.13 "**Sales Tax Law**" means and refers to: (a) California Revenue and Taxation Code Section 7200 et seq., and any successor law thereto; (b) any legislation allowing City or other public agency with jurisdiction in City to levy any form of local Sales Tax on the operations of Tenant; and (c) regulations of the BOE and other binding rulings and interpretations relating to (a) and (b) of this Section 1.3.13.

1.3.14 "**Sales Tax Revenues**" means the net Sales Tax actually received by the City from the BOE pursuant to the application of the Sales Tax Law (as such statutes may hereafter be amended, substituted, replaced, re-numbered, moved or modified by any successor law) attributable to the Business Activities in a particular Operating Year, including, without limitation, net Sales Tax actually received by the City and attributable to the leasing of motor vehicles as part of the Business Activities in a particular Operating Year even if the Sales Taxes are paid and/or collected and paid by lessors unaffiliated with Tenant. Sales Tax Revenues shall not include: (a) Penalty Assessments; (b) any Sales Tax levied by, collected for or allocated to the State of California, the County of San Bernardino, or a district or any entity (including an allocation to a statewide or countywide pool) other than City; (c) any administrative fee charged by the BOE; (d) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City's) law, rule or regulation; (e) any Sales Tax attributable to any transaction not consummated within the Eligibility Period; or (f) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into or payment from the City's general fund.

1.3.15 "**Tenant**" means and refers to PAG Ontario B1, Inc., a Delaware corporation, and its successors and assigns, cumulatively.

2. COVENANTS RUNNING WITH THE LAND; COVENANT PAYMENTS; REMEDIES FOR BREACH.

2.1 Covenants Running with the Land.

2.1.1 Operating and Use Covenant. Tenant covenants and agrees that, for a period of no less than ten (10) years following the Effective Date (unless terminated sooner pursuant to specific provisions of this Covenant Agreement), Tenant shall operate, or cause to be operated upon the Property, the Business Activities in a commercially reasonable business manner, consistent with all applicable provisions of federal, state and local laws and regulations. Subject to Section 3.8, the Business Activities shall be operated in accordance with the reasonable and customary practices in surrounding communities. Tenant will operate, or cause to be operated, the Businesses in a commercially reasonable and prudent manner, with the objective of generating the greatest feasible amount of Sales Tax Revenues. Tenant's obligations pursuant to the immediately preceding sentence include, without limitation, the obligation to obtain or cause to be obtained all federal, state and local licenses and permits required for the operation of the business and to advertise, market and promote the business in a commercially reasonable fashion, consistent with the objective of maximizing the amount of Sales Tax Revenues. For the term of this Operating Covenant, the Tenant may use the Property, or allow a third party to use the Property, only for the purposes of the operation of the Business Activities in accordance with this Covenant Agreement, unless otherwise agreed to in writing by the City Manager, in his or her sole and exclusive discretion.

2.1.2 Covenant to Designate City as Point of Sale. Tenant covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 2.1.1, Tenant shall consummate or cause to be consummated at the Business Site all taxable sales transactions

resulting from the Business Activities and identify the City as such in all reports to the California State Board of Equalization ("BOE") in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law (Revenue and Taxation Code 7200, et seq.), as it may be amended or substituted. Tenant shall be solely responsible for ensuring that all taxable sales transactions for Business Activities are consummated at the Business Site, consistent with all applicable statutory and BOE regulatory requirements applicable to the Business Activities and the designation of the City as the "point of sale" for all taxable sales occurring as a result of the Business Activities.

2.1.3 Tenant's Additional Obligations Regarding Repairs and Alterations to the Property. Tenant covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 2.1.1, the Tenant shall maintain, or cause to be maintained, the Property and the Businesses in good condition, ordinary wear and tear excepted, and free from the accumulation of trash or other debris and agrees to promptly remove, or cause the removal of, all graffiti upon the Property. Tenant shall also maintain or cause to be maintained the landscaping upon the Businesses and Property in a good condition.

2.1.4 Covenant Against Solicitation and Acceptance of Economic Incentives During the Term of the Operating Use Covenant. Tenant covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 2.1.1, Tenant will not directly or indirectly solicit or accept any "Financial Assistance" from any other public or private person or entity, if such Financial Assistance is given for the purpose of causing or would result in Tenant's breach of any of the Covenants. For purposes of this Section 2.1.4 the term "Financial Assistance" means any direct or indirect payment, subsidy, rebate, or other similar or dissimilar monetary or non-monetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, public financings, property or sales tax relief, rebates, exemptions or credits, relief from public improvement obligations, and payment for public improvements to or for the benefit of Tenant or any subtenant of Tenant.

2.1.5 Use of Property. Tenant covenants and agrees that the Property shall be put to no use other than those uses specified in the City's General Plan, the Specific Plan, zoning ordinances, and this Covenant Agreement, as the same may be amended from time to time. Nothing in this Section 2.1.5 shall limit, expand, modify or otherwise affect any right of the Tenant to continue any legal nonconforming use upon the Property following changes in the City's General Plan or zoning ordinances.

2.2 Covenant Payments.

2.2.1 Statement of Intent. The consideration to be paid to the Tenant in exchange for the Covenants and Tenant's performance of its obligations set forth in this Covenant Agreement, and subject to satisfaction of all conditions precedent thereto, shall consist of City's payment to the Tenant for each Operating Year during the Eligibility Period that the City receives Sales Tax Revenue, an amount equal to the sum of fifty percent (50%) of the Sales Tax Revenues received by the City in excess of the Base Amount for that Operating Year ("Covenant Payment"). Notwithstanding any other provision of this Covenant Agreement, the cumulative total of any and all Covenant Payments paid by the City pursuant to this Covenant Agreement shall not exceed Two Million Dollars ($2,000,000).

2.2.2 City's Notice of Determination of Operating Year Local Sales Tax Revenues and Covenant Payment. Within one hundred twenty (120) calendar days following an Operating Year within the Eligibility Period, the City will determine the Local Sales Tax Revenues applicable to that Operating Year and send the Covenant Payment due for that Operating Year to Tenant ("Notice of Determination").

2.3 Tenant's Notice of Appeal; Negotiation Period. Notwithstanding any other provision of law, including, without implied limitation, any statutes of limitation provided therefore in the California Government Code or the California Code of Civil Procedure, the City's determination of each Covenant Payment shall be deemed final, conclusive, and non-appealable unless, within sixty (60) calendar days from the receipt of the Covenant Payment by Tenant, Tenant notifies the City in writing that Tenant appeals the Covenant Payment, which notice must specifically identify the matter appealed and all of the bases for such appeal and include the following documentation: (i) certified copies of quarterly reports to the BOE which set forth the amount of sales tax paid to the BOE during the Operating Year in connection with Business Activities; (ii) any and all bills, invoices, schedules, vouchers, statements, receipts, cancelled checks, and any other documents evidencing the amount of sales tax paid from the Business Activities during such Operating Year; and (iii) any and all invoices, and inventory records for such Operating Year, certified as accurate and complete by an authorized official of the party submitting such records ("Notice of Appeal"). Any Covenant Payment that is not appealed in the manner and within the time limits set forth above shall be final and conclusive as against Tenant and all others claiming by or through Tenant. The provisions of this Section 2.3 shall be strictly construed and Tenant waives, to the maximum legal extent, any statutory or judicially created right to institute any administrative or judicial proceeding to contest any matter set forth in a Notice of Appeal that is not timely appealed in strict accordance with this Section 2.3. If Tenant files a timely Notice of Appeal with the City, the City and Tenant shall negotiate in good faith to resolve their dispute for a period of no less than thirty (30) calendar days ("Negotiation Period"). If, by the end of the Negotiation Period, the City and Tenant are unable to resolve the dispute set forth in the Notice of Appeal, each of them may exercise any judicial remedy available to them pursuant to this Covenant Agreement for the resolution of such dispute; provided, however, that any provision of law to the contrary notwithstanding, such judicial remedy must be instituted (defined as the filing of an action in a court of competent jurisdiction in strict accordance with the terms of this Covenant Agreement) within one hundred twenty (120) calendar days following the end of the Negotiation Period or be barred forever. In connection therewith, the City and Tenant irrevocably consent to the appointment of a referee to resolve such dispute in accordance with California Code of Civil Procedure Section 638 et seq., and to pay equal amounts of the cost of such referee.

2.3.1 No Accrual of Interest for Disputed Covenant Payment(s). The City and Tenant agree that any disputed amount shall not accrue interest during the pendency of any Negotiation Period or subsequent legal proceeding (including any appeals filed in connection therewith), unless the court makes a determination upon recommendation of the referee that the City acted in bad faith with regard to the dispute, in which case, any amount ultimately adjudged to be owing by the City shall be deemed to have accrued interest at the rate of six percent (6%) simple interest per annum, commencing on the ninetieth (90th) calendar day following the end of the Negotiation Period and continuing thereafter until paid. Tenant hereby waives, to the

maximum legal extent, the right to the imposition of any different rate of interest in accordance with any provision of law.

2.3.2 Covenant Payment Paid From Any Source of City Funds. Any Covenant Payment due under this Section 2.2 may be payable from any source of any funds of the City legally available for such purpose. The City covenants to reasonably consider such actions as may be necessary to include all payments owed hereunder in each of its annual budgets during the Eligibility Period and to reasonably consider the necessary annual budgetary appropriations for all such payments.

2.3.3 Making Covenant Payment Is A Contingent Obligation of City. The City's obligations under this Section 2.2 are contingent on a fiscal year to fiscal year basis and, for each Operating Year within the Eligibility Period, the City's obligations to make any payments to Tenant under this Covenant Agreement are expressly contingent upon Tenant, for the entirety of such Operating Year, completely fulfilling its material obligations under this Covenant Agreement. If for any reason Tenant fails to authorize the release or use of all or any part of sales tax information regarding the Businesses in a manner satisfactory to the BOE or provide any information reasonably required by the City to perform the City's obligations under this Covenant Agreement, or if all or any part of the sales tax information of Tenant is unavailable to the City or the City is not legally authorized to use such information for the purposes of performing its obligations under this Covenant Agreement, the Covenant Payment shall be based solely upon the information so received, if any.

2.3.4 BOE Determination of Improperly Allocated Local Sales Tax Revenues. If, at any time during or after the Eligibility Period of this Covenant Agreement, the BOE determines that all or any portion of the Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if the BOE requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Sales Tax Revenues, then Tenant shall, within thirty (30) calendar days after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to Tenant which are attributable to such repaid, offset or recaptured Sales Tax Revenues. If Tenant fails to make such repayment within thirty (30) calendar days after the City's written demand, then Tenant shall be in breach of this Covenant Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. Additionally, the City may deduct any amount required to be repaid by Tenant under this Section 2.3.4 from any future Covenant Payments otherwise payable to Tenant under this Covenant Agreement. This Section 2.3.4 shall survive the expiration or termination of this Covenant Agreement.

2.4 Default.

2.4.1 Tenant Default. City shall provide Tenant with written notice of Tenant's failure ("Tenant Default") to strictly abide by any material provision of this Covenant Agreement, including, without limitation, the Covenants. Tenant shall have thirty (30) days from the date of such notice to either cure such Tenant Default, or, if such Tenant Default cannot

be reasonably cured during such thirty (30) day period, to commence to cure within said thirty (30) day period and diligently prosecute such cure to completion thereafter.

2.4.2 City Default. Tenant shall provide City with written notice of City's failure ("City Default") to strictly abide by any material provision of this Covenant Agreement. City shall have thirty (30) days from the date of such notice to either cure such City Default, or, if such City Default cannot be reasonably cured during such thirty (30) day period, to commence to cure within said thirty (30) day period and diligently prosecute such cure to completion thereafter.

2.5 General Remedies for Default. Except as provided in Section 2.7, upon either a City or an Tenant Default (as defined in Section 2.4) uncured within the applicable cure period, Tenant or City (as applicable) shall have the right to seek all available legal and equitable remedies, including, without implied limitation, general and consequential damages, unless otherwise expressly provided to the contrary herein. Unless prohibited by law or otherwise provided by a specific term of this Covenant Agreement, the rights and remedies of the City and the Tenant under this Covenant Agreement are nonexclusive and all remedies hereunder may be exercised individually or cumulatively, and the City may simultaneously pursue inconsistent and/or alternative remedies. Either Party may, upon the Default of the other Party uncured within the applicable cure period and in addition to pursuing all remedies otherwise available to it, terminate this Covenant Agreement and all of its obligations hereunder without cost, expense or liability to itself. Notwithstanding the foregoing or anything to the contrary in this Covenant Agreement, in the event of a City Default, Tenant shall only be permitted to pursue collection of the Covenant Payments on an Operating Year-to-Operating Year basis as such Covenant Payments become due hereunder. Tenant hereby expressly waives any right Tenant may have to seek, demand or collect, on an accelerated basis, any Covenant Payments that may be due after the date of any City Default.

2.6 The City's Rights to Terminate its Obligations under Section 2.2. The City's obligations under Section 2.2 shall automatically terminate without cost, expense, or liability to City, upon the occurrence of any one or more of the following: (i) Tenant Default; (ii) the end of the Eligibility Period; (iii) the aggregate sum of the Covenant Payments being equal to Two Million Dollars ($2,000,000); or (iv) upon the final determination by a court of competent jurisdiction that any one or more of the Covenants are void, voidable, invalid, or even unenforceable for any reason whatsoever, including, without limitation, legal infirmity. Termination of the City's obligations under Section 2.2 in accordance with subsection (i) of this Section 2.6 shall not operate to forgive, modify, discharge or excuse Tenant's obligations arising under this Covenant Agreement.

2.7 Liquidated Damages.

2.7.1 Tenant Default With Respect to Obligations Under Sections 2.1.1 and 2.1.2. The Parties acknowledge that the consideration to the City for its entry into this Covenant Agreement and the performance of its obligations hereunder include the City's receipt of Sales Tax Revenues, employment and other payroll taxes, property taxes, and other direct and indirect financial and non-financial benefits arising from the operation of the Business Activities and the location of the Businesses at the Property, located within the City. Tenant agrees that the City

will suffer damages if Tenant commits any Tenant Default with respect to any of its obligations arising under Sections 2.1.1 and 2.1.2 that is uncured within the applicable cure period. The Parties agree that the exact determination of such damages would be impracticable and extremely difficult to quantify. Accordingly, the Parties have determined that Liquidated Damages represents a reasonable estimate of the damages which would be suffered by the City if Tenant commits any Tenant Default with respect to any of its obligations set forth in Sections 2.1.1 and 2.1.2 that is uncured within the applicable cure period. Accordingly, as its sole and exclusive monetary remedy for an Tenant Default with respect to any of its covenants and obligations set forth in Sections 2.1.1 and 2.1.2 that is uncured within the applicable cure period, the City shall be entitled to: (1) terminate this Covenant Agreement and the entirety of its obligations hereunder, including any accrued and unpaid Covenant Payments, and (2) receive from Tenant the applicable amount of Liquidated Damages.

2.7.2 ACKNOWLEDGEMENT OF REASONABLENESS OF LIQUIDATED DAMAGES. UPON AN TENANT DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 2.1.1 AND 2.1.2, FOLLOWING NOTICE AND OPPORTUNITY TO CURE PURSUANT TO SECTION 2.4.1, THE CITY AND TENANT ACKNOWLEDGE AND AGREE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY WITH RESPECT TO SUCH DEFAULT. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE CITY WOULD SUFFER, THE PARTIES AGREE THAT THE LIQUIDATED DAMAGES AMOUNT REPRESENTS A REASONABLE ESTIMATION OF THOSE DAMAGES. THEREFORE, UPON AN TENANT DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 2.1.1 AND 2.1.2, AS ITS SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT, THE CITY SHALL BE ENTITLED TO (1) RECEIPT OF THE LIQUIDATED DAMAGES, WHICH TENANT SHALL PAY WITHIN TEN (10) DAYS FOLLOWING WRITTEN DEMAND FROM THE CITY, AND (2) TERMINATE THIS COVENANT AGREEMENT AND THE ENTIRETY OF ITS OBLIGATIONS HEREUNDER, INCLUDING ANY ACCRUED BUT YET UNPAID COVENANT PAYMENTS.

_____	_____
Initials of Authorized City Representative	Initials of Authorized Tenant Representative

3. GENERAL TERMS

3.1 Tax Consequences. Tenant acknowledges that it may experience tax consequences as a result of its receipt of the payments provided for in this Covenant Agreement and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way therewith.

3.2 Rights Not Granted Under Covenant Agreement. This Covenant Agreement is not, and shall not be construed to be, a Development Agreement under Government Code Section 65864 et seq. This Covenant Agreement is not, and shall not be construed to be, an approval or an agreement to issue permits or a granting of any right or entitlement by the City

concerning the Property, Business Activities, Businesses, or any other project, development, or construction by the Tenant in the City. This Covenant Agreement does not, and shall not be construed to, exempt Tenant from the application and/or exercise of the City's or City's power of eminent domain or its police power, including, but not limited to, the regulation of land uses and the taking of any actions necessary to protect the health, safety, and welfare of its citizenry.

3.3 Consent. Whenever consent or approval of any party is required under this Covenant Agreement, that party shall not unreasonably withhold, delay or condition such consent or approval unless otherwise allowed by a specific provision of this Covenant Agreement.

3.4 Notices and Demands. All notices or other communications required or permitted between the City and Tenant under this Covenant Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (iii) sent by telecopier, or (iv) sent by nationally recognized overnight courier service (e.g., Federal Express), addressed to the Parties at the addresses provided in Section 1.2, subject to the right of either party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been given on the second business day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by telecopier or courier service (e.g., Federal Express), shall be deemed given upon receipt of the same by the party to whom the notice is given.

3.5 Nonliability of the City or City Officials and Employees. No board member, official, contractor, consultant, attorney or employee of the City or City shall be personally liable to Tenant, any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in the Property, in the event of any default or breach by the City, or for any amount which may become due to the Tenant or to its successors or assignees, or on any obligations arising under this Covenant Agreement.

3.6 Conflict of Interests. No board member, official, contractor, consultant, attorney or employee of the City or City shall have any personal interest, direct or indirect, in this Covenant Agreement nor shall any such board member, official or employee participate in any decision relating to this Covenant Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested.

3.7 Entire Agreement; Good Faith Negotiations. This Covenant Agreement contains all of the terms and conditions agreed upon by the Parties and supersedes any previous agreements between the Parties concerning the subject matter of this Covenant Agreement. No other understanding, oral or otherwise, regarding the subject matter of this Covenant Agreement shall be deemed to exist or to bind any of the parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Covenant Agreement.

The Parties acknowledge that this Covenant Agreement is the product of mutual arms-length negotiations and that each party has been, or has had the opportunity to have been,

represented by legal counsel in the negotiation and drafting of this Covenant Agreement. Accordingly, the rule of judicial construction which provides that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Covenant Agreement. In any action or proceeding to interpret and/or enforce this Covenant Agreement, the trier of fact may refer to extrinsic evidence not in conflict with any specific provision of this Covenant Agreement to ascertain and give effect to the intent of the Parties hereto.

3.8 Time Deadlines Critical; Extensions and Delays; No Excuse Due to Economic Changes. Time is of the essence in the performance of the City's and Tenant's obligations under this Covenant Agreement. In addition to specific provisions of this Covenant Agreement providing for extensions of time, times for performance hereunder shall be extended where delays or defaults are due to war; insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation; acts of a public enemy; referenda; acts of governmental authorities (except that the failure of the City to act as required hereunder shall not excuse its performance); moratoria; epidemics; quarantine restrictions; and freight embargoes (collectively, "Enforced Delays") provided, however, that the Party claiming the extension notify the other Party of the nature of the matter causing the default; and, provided further, that the extension of time shall be only for the period of the Enforced Delays.

3.8.1 ANYTHING IN THIS COVENANT AGREEMENT TO THE CONTRARY NOTWITHSTANDING, TENANT EXPRESSLY ASSUMES THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVES, TO THE GREATEST LEGAL EXTENT, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, FRUSTRATION OF PURPOSE, CHANGED ECONOMIC CIRCUMSTANCES OR SIMILAR THEORIES.

3.8.2 TENANT EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF TENANT SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN THE MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS COVENANT AGREEMENT. TENANT EXPRESSLY ASSUMES THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF TENANT'S EXECUTION OF THIS COVENANT AGREEMENT.

INITIALS OF AUTHORIZED TENANT REPRESENTATIVE

3.9 Attorneys' Fees. In the event of the bringing of an arbitration, action or suit by a Party hereto against another Party hereunder by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Covenant Agreement or any other dispute between the Parties concerning this Covenant Agreement or the Property, then, in that event, the prevailing party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to have and recover of and from the other Party all costs and expenses of suit or claim, including

actual attorneys' fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including actual attorneys' fees (collectively, the "Costs") incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section 3.9, "Costs" shall include, without implied limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination, (iv) discovery; and (v) bankruptcy litigation. This Section 3.9 shall survive any termination of this Covenant Agreement.

3.10 Amendments to This Covenant Agreement. Any amendments to this Covenant Agreement must be in writing and signed by the appropriate authorities of both the City and Tenant. The City Manager is authorized on behalf of the City to approve and execute minor amendments to this Covenant Agreement, including, but not limited to, the granting of extensions of time to Tenant, not to exceed ninety (90) days in the aggregate.

3.11 Jurisdiction and Venue. Any legal action or proceeding concerning this Covenant Agreement shall be filed and prosecuted in the appropriate California state court in the County of San Bernardino, California. Both Parties hereto irrevocably consents to the personal jurisdiction of that court. The City and Tenant each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between the City and Tenant, due to the fact that the City is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, the City and Tenant specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. Tenant acknowledges that the provisions of this Section 3.11 are material consideration to the City for its entry into this Covenant Agreement, in that the City will avoid the potential cost, expense and inconvenience of litigating in a distant forum.

3.12 Counterpart Originals; Integration. This Covenant Agreement may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument. This Covenant Agreement and any exhibits represent the entire understanding of the Parties and supersedes all negotiations, letters of intent, memoranda of understanding or previous agreements between the parties with respect to all or any part of the subject matter hereof.

3.13 No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

3.14 Successors and Assigns. This Covenant Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

3.15 No Third Party Beneficiaries. The performance of the respective obligations of the City and Tenant under this Covenant Agreement are not intended to benefit any party other than the City or Tenant, except as expressly provided otherwise herein. No person or entity not a signatory to this Covenant Agreement shall have any rights or causes of action against any party to this Covenant Agreement as a result of that party's performance or non-performance under this Covenant Agreement, except as expressly provided otherwise herein.

3.16 Warranty Against Payment of Consideration for Covenant Agreement. Tenant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Covenant Agreement. Third parties, for the purposes of this Section 3.16, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by Tenant.

3.17 Severability. The City and Tenant declare that the provisions of this Covenant Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Covenant Agreement and the remainder of the Covenant Agreement enforced in accordance with its terms.

3.18 Further Acts and Releases. The City and Tenant each agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

3.19 Estoppels. At the request of Tenant or any holder of a mortgage or deed of trust secured by all or any portion of the Property, the City shall promptly execute and deliver to Tenant or such holder a written statement of the City as to any of the following matters as to which Tenant or such holder may inquire: (i) that no default or breach exists, or would exist with the passage of time, or giving of notice, or both, by Tenant pursuant to this Covenant Agreement, if such be the case; (ii) the total amount of Covenant Payments made by the City to Tenant pursuant to this Covenant Agreement prior to the date of such written statement; (iii) the amount of any Covenant Payments earned by or due and owing to Tenant pursuant to this Covenant Agreement as of the date of such written statement; (iv) the Covenant Payments for a particular Operating Year; (v) if the City has determined that Tenant is in default or breach hereunder, the nature of such default and the action or actions required to be taken by Tenant to cure such default or breach; and (vi) any other matter affecting the rights or obligations of Tenant hereunder as to which Tenant or such holder may reasonably inquire. The form of any estoppel letter shall be prepared by Tenant or such holder at its sole cost and expense and shall be reasonably acceptable in form and content to the City and Tenant. The City may make any of the representations described above based on the actual current knowledge of the then-current City Manager.

3.20 Joint Defense of Third Party Attack Upon Covenant Agreement. If any third party should commence any action or proceeding to set aside, annul, void or attack this Covenant Agreement or any provisions hereof, Tenant and City agree to reasonably and mutually cooperate in the defense of such action or proceeding. For purposes of this Covenant Agreement, third party shall mean any action, lawsuit, administrative action or judicial

proceeding including those for injunctive relief brought by including but not limited to residents, taxpayers, taxpayer associations, business entities, municipalities, or any other person, entity or public entity that may bring such an action. The parties shall select mutually acceptable legal counsel to jointly represent them and shall share equally the expense of such legal counsel and litigation costs.

3.21 State of California Legislation Impact on Covenant Payment. Tenant acknowledges that the California legislature has in the past adopted certain legislation which diverted to the State of California a portion of the Sales Tax Revenues which were otherwise payable to the City. Tenant acknowledges that it is possible that the legislature may enact similar legislation in the future which would cause a corresponding reduction of and/or delay in the payment of the Sales Tax Revenues and that such reduction will cause Tenant a corresponding reduction and/or delay in the payment of the Covenant Payments due to Tenant during such time as such legislation is in effect. Furthermore, Tenant acknowledges that it is possible that the legislation described above, or some variant thereof, may be enacted and effective during one or more subsequent times during the Eligibility Period and may materially and negatively impact the amount of Sales Tax Revenues and, accordingly, Covenant Payments. The City does not make any representation, warranty or commitment concerning the future actions of the California legislature with respect to the allocation of Sales Tax Revenues to the City. Tenant agrees that it is undertaking its obligations under this Covenant Agreement after having considered, and is expressly assuming the risk of, the possibility of the enactment of such legislation.

The foregoing paragraph notwithstanding, City acknowledges that the California legislature may provide for the payment to City of other revenues for the purpose of offsetting any losses in Sales Tax Revenues resulting from the enactment of legislation of the type described in the immediately preceding paragraph. City agrees that, should the California legislature provide for such offsetting revenues, then for purposes of this Covenant Agreement and the computation of any Covenant Payments which may become due to Tenant hereunder, City will consider, on an Operating Year-to-Operating Year basis, any such offsetting revenues which are (i) indexed to Sales Tax and offset the loss of Sales Tax Revenues to the City on a dollar for dollar basis, (ii) actually received by the City, and (iii) not subject to any restrictions on use beyond those which are otherwise generally applicable to sales tax revenues received by California municipalities, to be Sales Tax Revenues within the meaning of this Covenant Agreement. Notwithstanding anything herein to the contrary, to the extent the City's receipt of Sales Tax Revenue is impaired or restricted in any way or otherwise eliminated for any reason, the City shall not be obligated to make any Covenant Payments during the period within which the City's receipt of Sales Tax Revenue is so restricted, impaired or eliminated.

[Signatures on the following page]

SIGNATURE PAGE TO THE
OPERATING COVENANT AGREEMENT
(BMW/MINI of Ontario)

Tenant and City sign and enter into this Covenant Agreement by and through the signatures of their authorized representatives set forth below:

CITY:

CITY OF ONTARIO,
a California municipal corporation

By:_____
Al C. Boling
City Manager

Attest:

By:_____
Mary E. Wirtes, MMC
City Clerk

Approved as to form:
Best Best & Krieger LLP

By:_____
City Attorney

TENANT:

PAG ONTARIO B1, INC.,
a Delaware corporation

By:_____
George W. Brochick,
Executive Vice President

CITY OF ONTARIO

Agenda Report
February 18, 2014

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN ONTARIO SCHAEFER HOLDINGS, LLC, AND THE CITY OF ONTARIO TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving an amendment (File No. PDA14-001) to the Development Agreement between Ontario Schaefer Holdings, LLC of Anaheim Hills, CA, and the City of Ontario to update certain provisions of the existing Development Agreement to conform with the Construction Agreement Amendment with NMC Builders, LLC, and to provide for phasing of the construction of public infrastructure.

COUNCIL GOALS: **Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health**
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains, and Public Facilities)
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

FISCAL IMPACT: The proposed Development Agreement Amendment will update certain provisions of the existing Development Agreement to conform with the Construction Agreement Amendment with NMC Builders, LLC, and to provide for phasing of the construction of public infrastructure. In addition, the City will receive Public Service Funding fees plus development impact, compliance processing, licensing, and permitting fees. Original Model Colony revenue will not be used to support the New Model Colony development. The Development Agreement and the related tract map conditions require the developer to construct public infrastructure.

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: Scott Murphy
Department: Planning

City Manager Approval:

Submitted to Council/O.H.A. 02/18/2014
Approved:
Continued to:
Denied:

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BACKGROUND: Ontario Schaefer Holdings, LLC, ("Ontario Schaefer") and the City recognized that the financial commitment required for construction in the New Model Colony was substantial. To adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, Ontario Schaefer entered into a Development Agreement with the City providing for the development of up to 234 dwelling units. The Development Agreement, approved in June 2007, addressed issues of parkland, public facilities, public services funding, infrastructure and affordable housing.

The Amendment incorporates new and modified provisions to conform to the Construction Agreement Amendment, including:

- Continues the requirement for funding of Fire Station No. 9
- Requires evidence of compliance with the Construction Agreement requirements for participation in funding of regional water infrastructure and regional storm water treatment facilities (Mill Creek Wetlands)
- Modifies the amounts and escalation factors for the funding for City services

The amendment also incorporates specific requirements for the phased construction and completion of required public infrastructure, including regional and local streets and traffic signals, water and sewer utilities, and regional and local storm drain improvements.

The Development Agreement and the amendment continue to require funding for all new City expenses created by the development of the project. These expenses include all additional City-provided services, infrastructure and affordable housing requirements.

The main points of the Development Agreement including the provisions of the amendment are as follows:

Term:	Maintains the same term of ten years with a five year option.
Assignment:	Assignable with all terms and conditions applying to the assignee. New provisions are added in the Amendment to recognize and provide City approval of all partial assignments.
Fees:	
Development Impact Fees:	To be paid at current amounts; varies by category (i.e.; Streets and Bridges, Police, Fire, Open Space/Parks etc.). This is a separate fee from existing City licensing fees and permits and is due at building permit issuance for each unit.
Public Services Funding Fees:	Reduces the fee from $1,980/unit to $1,800/unit due in two installments:

1) $900/unit with the issuance of each building permit or within 30 days of City commencing construction of Fire Station No. 9, whichever occurs first.

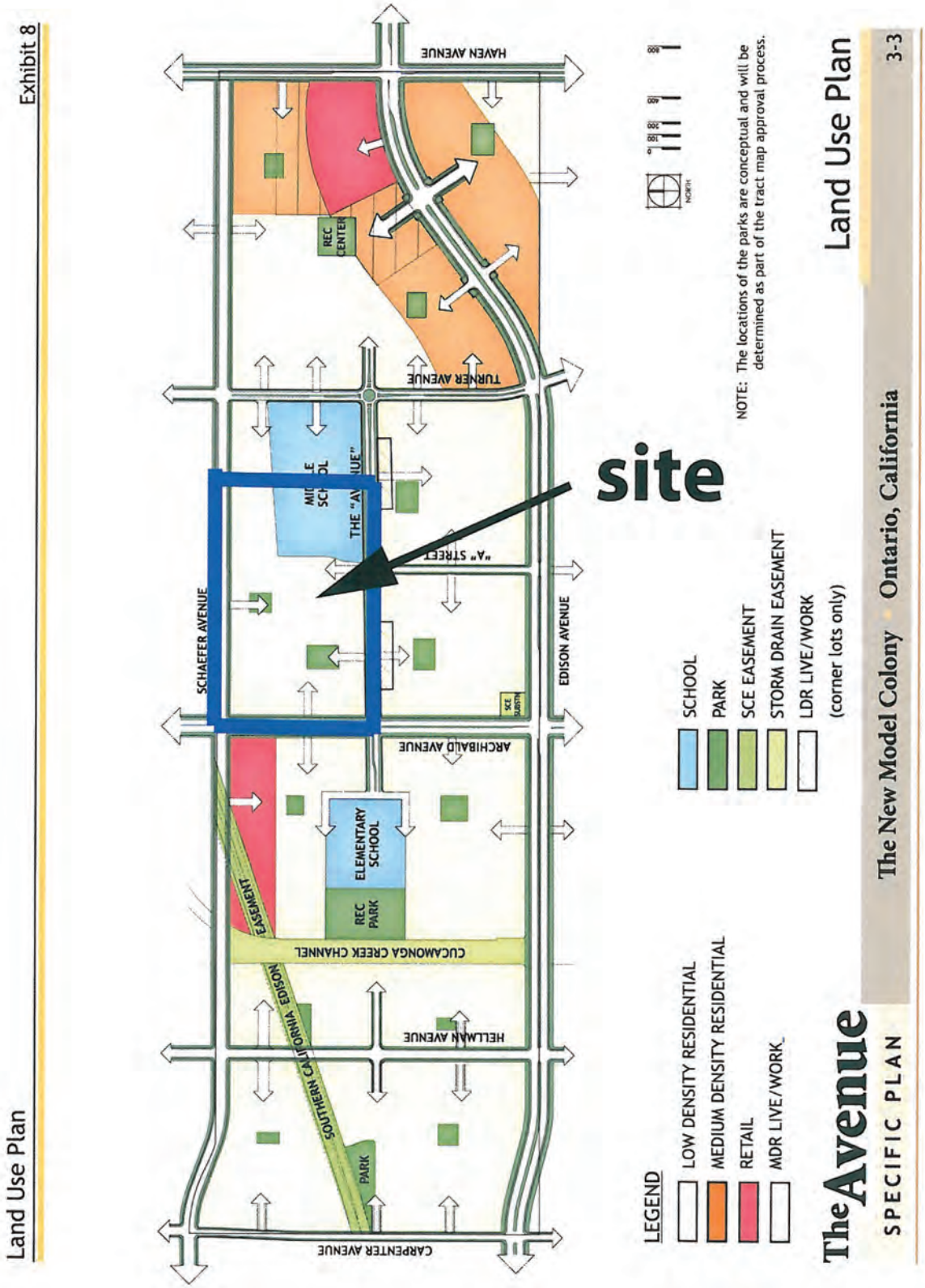
2) $900 upon issuance of each remaining building permits, the cost of which shall increase each January 1, beginning January 1, 2014.

Community Facilities District (CFD):	City will cooperate with Owner to form a CFD to reimburse costs of the regional backbone infrastructure construction and maintenance of public facilities.
Parks/Open Space:	Maintains The Ontario Plan (General Plan) requirement of five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees.
Housing:	Maintains the provision of affordable housing as required by the General Plan through construction, rehabilitation, or by paying an In-Lieu Fee.
Schools:	Maintains the requirement to satisfy Mountain View Elementary School District and Chaffey High School District school facilities requirements.
Termination:	Maintains the City's ability to terminate the Agreement if substantial evidence is found of noncompliance.

In considering the application at their meeting January 28, 2014, the Planning Commission found that the Development Agreement Amendment is consistent with State law, The Ontario Plan, the City's Development Agreement policies, and other Development Agreements previously approved for NMC development, and unanimously recommended approval of the Development Agreement Amendment to the City Council.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with The Avenue Specific Plan, for which an Environmental Impact Report (SCH #2005071109) was certified by the City Council on December 19, 2006. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by reference.

EXHIBIT "A"
THE AVENUE SPECIFIC PLAN LAND USE MAP



PLANNING COMMISSION STAFF REPORT

January 28, 2014

SUBJECT: An Amendment to the Development Agreement between Ontario Schaefer Holdings, LLC, and the City of Ontario **(File No. PDA14-001)** to update certain provisions of the existing Development Agreement to conform with the Construction Agreement Amendment with NMC Builders LLC

PROPERTY OWNER: Ontario Schaefer Holdings, LLC

RECOMMENDED ACTION: That the Planning Commission recommend City Council adoption of an ordinance approving the Amendment to the Development Agreement between Ontario Schaefer Holdings, LLC, and the City of Ontario.

Figure 1. Location Map

BACKGROUND: On December 19, 2006, the City Council gave first reading to the ordinance approving The Avenue Specific Plan (File No. PSP05-003) and certified the Environmental Impact Report (EIR) for the specific plan. On May 22, 2007, the Planning Commission approved Tentative Tract Map No. 18419 for the development of 234

		Hearing Body	Date	Decision	Action
Case Planner:	Scott Murphy, Planning Director				
Planning Director Approval:		DAB			
		ZA			
Submittal Date:	11/05/13	PC	01/28/14	Approved	Recommend
Hearing Deadline:	n/a	CC			Final

single family units on the subject property. On June 19, 2007, the City Council approved the Development Agreement between the City of Ontario and Ontario Land Investments, Inc. ("Ontario Land"), the original applicant for the property.

The original Development Agreement and the proposed Amendment applies to 59.82 acres of land generally located on the east side of Archibald Avenue, south of Shaefer Avenue. The original Development Agreement granted to Ontario Land a vested right to develop the project subject to the terms and conditions of the Development Agreement and The Avenue Specific Plan.

The original Development Agreement covered issues of parkland, public facilities, public services funding, infrastructure and affordable housing. These provisions in the original Development Agreement were based on similar provisions from the Construction Agreement between the City and NMC Builders LLC. The original Development Agreement was based upon the model development agreement that was developed in coordination with the City attorney's office and legal counsel for NMC Builders. This model Development Agreement was consistent with the provisions of the original Construction Agreement. The LLC agreement between NMC Builders' members requires that members of the LLC enter into Development Agreements that are consistent with the provisions of the Construction Agreement as amended.

In August 2012, the City and NMC Builders, LLC, entered into an Amended and Restated Construction Agreement known as the Construction Agreement Amendment. The Construction Agreement Amendment included several modifications that apply to the original Development Agreement between the City and Ontario Land. Additionally, the Construction Agreement Amendment noted the need to amend the existing Development Agreements for NMC Builders, LLC, members to provide more specific infrastructure requirements as the public infrastructure to be constructed by NMC Builders, LLC, was significantly reduced.

State law and Section 2.5 of the existing Development Agreement provide that amendments may be made to the Development Agreement, upon the mutual agreement of the parties, using the same process and procedures as for the consideration and approval of the original Development Agreement. Ontario Land is now seeking to amend the Development Agreement consistent with the Construction Agreement Amendment.

STAFF ANALYSIS: The proposed Amendment continues to apply to the same area as the original Development Agreement.

The Amendment incorporates new and modified provisions to conform to the Construction Agreement Amendment, including:

- Continues the requirement for funding of Fire Station No. 9

- Requirements Ontario Land to have evidence of compliance with the Construction Agreement requirements for participation in funding of regional water infrastructure and regional storm water treatment facilities (Mill Creek Wetlands)

- Modifies the amounts and escalation factors for the funding of City services

The Amendment also incorporates specific requirements for the phased construction and completion of required public infrastructure, including regional and local streets and traffic signals, water and sewer utilities, and regional and local storm drain improvements.

The Development Agreement and the Amendment continue to require funding for all new City expenses created by the development of the project. These expenses include all additional City-provided services, infrastructure and affordable housing requirements.

The main points of the Development Agreement including the provisions of the Amendment are as follows:

Term: Maintains the same term of ten (10) years with a five (5) year option.

Assignment: Assignable with all terms and conditions applying to the assignee. New provisions are added in the Amendment to recognize and provide City approval of all partial assignments.

Fees:

Development Impact Fees: To be paid at current amounts; varies by category (i.e.; Streets and Bridges, Police, Fire, Open Space/Parks etc.). This is a separate fee from existing City licensing fees and permits and is due at building permit issuance for each unit.

Public Services Funding Fees: Reduces the fee from $1,980/unit to $1,800/unit due in two (2) installments:

1) $900/unit with the issuance of the each building permit or within 30 days of City commencing construction of the Fire Station No. 9, whichever occurs first.
2) $900 upon issuance of each remaining building permits, the cost of which shall increase each January 1, beginning January 1, 2014.

Community Facilities District (CFD): City will cooperate with Owner to form a CFD to reimburse costs of infrastructure construction and maintenance of public facilities.

Parks/Open Space:	Maintains The Ontario Plan (General Plan) requirement of five (5) acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees; and recognizes that Ontario Land will construct 2.13 acres of parks and open space and pay a pro-rate fee for the remainder of the park and open space requirements
Housing:	Maintains the provision of affordable housing as required by the General Plan through construction, rehabilitation, or by paying an In-Lieu Fee.
Schools:	Maintains the requirement to satisfy Mountain View Elementary School District and Chaffey High School District school facilities requirements.
Termination:	Maintains the City's ability to terminate the Agreement if substantial evidence is found of noncompliance.

Staff finds that the Amendment is consistent with State law, The Ontario Plan, the City's Development Agreement policies. As a result, staff requests the Planning Commission recommend approval of the Development Agreement Amendment to the City Council.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed project is consistent with the principles, goals and policies contained within the six components that make up The Ontario Plan (TOP), including: (1) Vision, (2) Governance, (3) Policy Plan (General Plan), (4) City Council Priorities, (5) Implementation and (6) Tracking and Feedback.

Vision

- Planning systems and personnel that exemplify the very best in professional practices, based on a stable Vision and constantly evolving Ontario Plan.
- A demonstrated ability to attract housing in pursuit of our acknowledged responsibility to balance housing with the job growth that drives our quality of life.
- Superior quality and design of the built environment and open spaces through careful attention to detail at every scale, including public and private spaces and structures.
- A reputation for being good for business to work with while still satisfying broader community interests.
- A community that is widely recognized as a creative and effective partner and a leader within the Southern California region and the Inland Empire.
- A community that continues to step into the future ahead of everyone else.

Policy Plan

Land Use

LU1-1 *Strategic Growth.* We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, and foster the development of transit.

LU1-3 *Adequate Capacity.* We require adequate infrastructure and services for all development.

LU1-6 *Complete Community.* We incorporate a variety of land uses and building types in our land use planning efforts that result in a complete community where residents at all stages of life, employers, workers and visitors have a wide spectrum of choices of where they can live, work, shop and recreate within Ontario.

LU3-1 *Development Standards.* We maintain clear development standards which allow flexibility to achieve our vision.

LU3-3 *Land Use Flexibility.* We consider uses not typically permitted within a land use category if doing so improves livability, reduces vehicular trips, creates community gathering places and activity nodes, and helps create identity.

LU4-1 *Commitment to Vision.* We are committed to achieving our vision but realize that it may take time and several interim steps to get there.

LU4-3 *Infrastructure Timing.* We require that the necessary infrastructure and services be in place prior to or concurrently with development.

Housing

H1-3 *Community Amenities.* We shall provide adequate public services, infrastructure, open space, parking and traffic management, pedestrian, bicycle and equestrian routes and public safety for neighborhoods consistent with City master plans and neighborhood plans.

H3 A City regulatory environment that balances the need for creativity and excellence in residential design, flexibility and predictability in the project approval process, and the provision of an adequate supply and prices of housing.

H3-3 *Development Review.* We maintain a residential development review process that provides certainty and transparency for project stakeholders and the public, yet allows for the appropriate review to facilitate quality housing development.

Parks & Recreation

PR1-6 *Private Parks.* We expect development to provide a minimum of 2 acres of developed private park space per 1,000 residents.

PR1-9 *Phased Development.* We require parks be built in new communities before a significant proportion of residents move in.

Community Design

CD5 A sustained level of maintenance and improvement of properties, buildings and infrastructure that protects the property values and encourages additional public and private investments.

CD2-13 *Entitlement Process.* We work collaboratively with all stakeholders to ensure a high degree of certainty in the efficient review and timely processing of all development plans and permits.

City Council Priorities
Primary Goal:

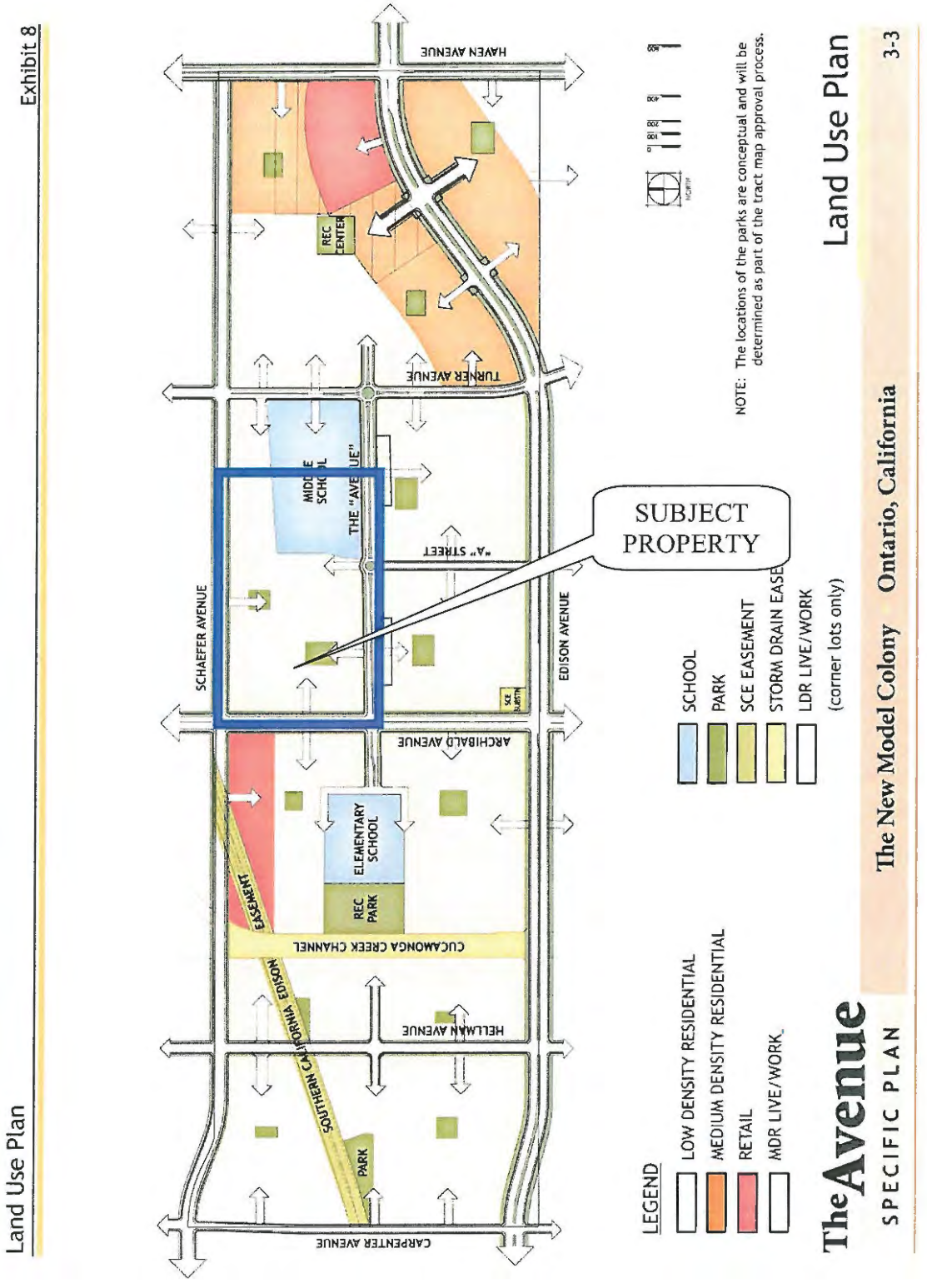
Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health.

Supporting Goals

- Invest in the Growth and Evolution of the City's Economy
- Operate in a Businesslike Manner
- Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
- Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with The Avenue Specific Plan, for which an Environmental Impact Report (SCH #2005071109) was certified by the City Council on December 19, 2006. This application introduces no new significant environmental impacts. All previously adopted mitigation measures are to be a condition of project approval and are incorporated herein by reference.

EXHIBIT A
SPECIFIC PLAN MAP



RESOLUTION NO. PC14-008

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS, LLC, (FORMERLY ONTARIO LAND INVESTMENTS, INC) FILE NO. PDA14-001, TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT TO CONFORM WITH THE CONSTRUCTION AGREEMENT AMENDMENT WITH NMC BUILDERS LLC, AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN TRACT MAP NOS. 18419, AND MAKING FINDINGS IN SUPPORT THEREOF . (APN: 0218-201-15 AND 44)

WHEREAS, California Government Code Section 65864 now provides, in pertinent part, as follows:

"The Legislature finds and declares that:

(a) The lack of certainty in the approval process of development projects can result in a waste of resources, escalate the cost of housing and other developments to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the Applicant for a development project that upon approval of the project, the Applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development."

WHEREAS, California Government Code Section 65865 provides, in pertinent part, as follows:

"Any city ... may enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of such property as provided in this article ..."

WHEREAS, California Government Code Section 65865.2. provides, in part, as follows:

"A Development Agreement shall specify the duration of the Agreement, the permitted uses of the property, the density of intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The Development Agreement may

include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for discretionary actions shall not prevent development of the land for the uses and to the density of intensity of development set forth in this Agreement ..."

WHEREAS, on the 4th day of April 1995, the City Council of the City of Ontario adopted Resolution No. 95-22 establishing procedures and requirements whereby the City of Ontario may consider Development Agreements.

WHEREAS, on the 10th day of September 2002, the City Council of the City of Ontario adopted Resolution No. 2002-100 which revised the procedures and requirements whereby the City of Ontario may consider Development Agreements.

WHEREAS, on the 19th day of June 2007, the City Council of the City of Ontario, adopted Ordinance No. 2862, approving a Development Agreement between Ontario Land Investments, Inc, and the City; and

WHEREAS, attached to this resolution, marked Exhibit "A" and incorporated herein by this reference, is the proposed Amendment to the Development Agreement between Ontario Schaefer Holdings, LLC, and the City of Ontario, File No. PDA13-002. Hereinafter in this Resolution, the Development Agreement is referred to as the "Amendment"; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with The Avenue Specific Plan, for which an Environmental Impact Report (SCH #2005071109) was certified by the City Council on December 19, 2006. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on January 28, 2014, the Planning Commission of the City of Ontario conducted a hearing to consider the Amendment and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1. Based upon substantial evidence presented to the Planning Commission during the above-referenced hearing on January 28, 2014, including written and oral staff reports, together with public testimony, the Planning Commission hereby specifically finds as follows:

a. The Amendment to the Development Agreement applies to 59.82 acres of residential and school land within The Avenue Specific Plan, generally located

on the east side of Archibald Avenue, south of Schaefer Avenue and is presently vacant; and

b. The properties to the north of the Project site are within the R1 (Single Family Residential) zoning designation and are developed with houses. The property to the south of the project site is within The Avenue Specific Plan, planned for single family residential development and is vacant. The property to the east is within The Avenue Specific Plan, is planned for single family residential development and a middle school and is vacant. The property to the west is within The Avenue Specific Plan, is planned for single family residential development and is vacant.; and

c. The Development Agreement and the Amendment to the Development Agreement establishes parameters for the development of The Avenue residential projects. The Development Agreement also grants Ontario Schaefer Holdings, LLC, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy plan (General Plan), design guidelines and development standards for The Avenue Specific Plan; and

d. The Amendment to the Development Agreement focuses revisions to the Development to bring it into consistency with the Construction Agreement between the City and New Model Colony Builders, ("NMC"), LLC; and

e. The Amendment to the Development Agreement will provide for the phasing of various improvements established by The Avenue Specific Plan; and

f. The Amendment to the Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

g. The Amendment to the Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

h. The Amendment to the Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and,

i. The Amendment to the Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties but the benefits of the project outweighs the potential environmental impacts and the mitigation of these impacts were addressed in The Avenue Specific Plan EIR certified by the City Council on December 19, 2006.

SECTION 3. Based upon the findings and conclusions set forth in Sections 1 above, the Planning Commission hereby recommends the City Council approve the Project.

SECTION 4. The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 5. The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 6. The Secretary shall certify to the adoption of the Resolution.

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The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of January 2014, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Rick Gage
Planning Commission Chairman

ATTEST:

Scott Murphy
Planning Director/Secretary of Planning Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Jeanina Romero, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC14-008 was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on January 28, 2014, by the following roll call vote, to wit:

AYES: Delman, Downs, Gage, Mautz, Willoughby, Ricci

NOES: None

ABSENT: None

ABSTAIN: Gregorek

Jeanina M. Romero
Secretary Pro Tempore

Exhibit A – First Amendment to the Development Agreement
(See Attached)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS, LLC, FILE NO. PDA14-001, TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT TO CONFORM WITH THE CONSTRUCTION AGREEMENT AMENDMENT WITH NMC BUILDERS LLC, AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN TRACT MAP NO. 18419, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0218-201-14 AND 44)

WHEREAS, California Government Code Section 65864 now provides, in pertinent part, as follows:

"The Legislature finds and declares that:

(a) The lack of certainty in the approval process of development projects can result in a waste of resources, escalate the cost of housing and other developments to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the Applicant for a development project that upon approval of the project, the Applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development."

WHEREAS, California Government Code Section 65865 provides, in pertinent part, as follows:

"Any city … may enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of such property as provided in this article …"

WHEREAS, California Government Code Section 65865.2. provides, in part, as follows:

"A Development Agreement shall specify the duration of the Agreement, the permitted uses of the property, the density of intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The Development Agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for discretionary actions shall not prevent development of the land for the uses and to the density of intensity of development set forth in this Agreement …"

WHEREAS, on the 4th day of April 1995, the City Council of the City of Ontario adopted Resolution No. 95-22 establishing procedures and requirements whereby the City of Ontario may consider Development Agreements; and

WHEREAS, on the 10th day of September 2002, the City Council of the City of Ontario adopted Resolution No. 2002-100 which revised the procedures and requirements whereby the City of Ontario may consider Development Agreements; and

WHEREAS, on the 19th day of June 2007, the City Council of the City of Ontario adopted Ordinance No. 2862, approving a Development Agreement between Ontario Land Investments, Inc., and the City; and

WHEREAS, attached to this Resolution, marked Exhibit "A" and incorporated herein by this reference, is the proposed Amendment to the Development Agreement between Ontario Schaefer Holdings, and the City of Ontario, File No. PDA14-001. Hereinafter in this Resolution, the Development Agreement is referred to as the "Amendment"; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with The Avenue Specific Plan, for which an Environmental Impact Report (SCH #2005071109) was certified by the City Council on December 2006. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on January 28, 2014, the Planning Commission of the City of Ontario conducted a hearing to consider the Amendment and concluded said hearing on that date. After considering all public testimony, the Planning Commission unanimously recommended approval of the Amendment to the City Council; and

WHEREAS, on February 18, 2014, the City Council of the City of Ontario conducted a hearing to consider the Amendment and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1. Based upon substantial evidence presented to the City Council during the above-referenced hearing on February 18, 2014, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Amendment to the Development Agreement applies to 59.82 acres of residential and school land within The Avenue Specific Plan, generally located on the east side of Archibald Avenue, south of Schaefer Avenue and is presently vacant; and

b. The properties to the north of the Project site are within the R1 (Single Family Residential) zoning designation and are developed with houses. The property to the south of the project site is within The Avenue Specific Plan, planned for single family residential development and is vacant. The property to the east is within The Avenue Specific Plan, is planned for single family residential development and a middle school and is vacant. The property to the west is within The Avenue Specific Plan, is planned for single family residential development and is vacant; and

c. The Development Agreement and the Amendment to the Development Agreement establishes parameters for the development of The Avenue residential projects. The Development Agreement also grants Ontario Schaefer Holdings, LLC, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy plan (General Plan), design guidelines and development standards for The Avenue Specific Plan; and

d. The Amendment to the Development Agreement focuses revisions to the Development to bring it into consistency with the Construction Agreement between the City and New Model Colony Builders, ("NMC"), LLC; and

e. The Amendment to the Development Agreement will provide for the phasing of various improvements established by The Avenue Specific Plan; and

f. The Amendment to the Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

g. The Amendment to the Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

h. The Amendment to the Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

i. The Amendment to the Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties but the benefits of the project outweighs the potential environmental impacts and the mitigation of these impacts were addressed in The Avenue Specific Plan EIR certified by the City Council on December 19, 2006.

SECTION 2. Based upon the findings and conclusions set forth in Section 1 above, the City Council hereby approves the Project.

SECTION 3. The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 4. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 5. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 6. Effective Date. This Ordinance shall become effective 30 days following its adoption.

SECTION 7. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this _____ day of _____2014.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held February 18, 2014 and adopted at the regular meeting held _____, 2014 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

Exhibit A – First Amendment to the Development Agreement
(See Attached)

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS, LLC

This First Amendment to the Development Agreement (hereinafter "First Amendment") is entered into as of the _____ day of _____ 20__ by and between the CITY OF ONTARIO, a California municipal corporation (hereinafter "CITY"), and ONTARIO SCHAEFER HOLDINGS, LLC, a Delaware limited liability company (hereinafter "OWNER").

RECITALS

WHEREAS, the CITY and Distinguished Land Development, Inc., a California corporation, as predecessor in interest of OWNER, previously entered into a Development Agreement pursuant to Section 65864, et seq., of the Government Code, (hereinafter the "Original Development Agreement") and such Original Development Agreement was recorded in the County of San Bernardino on June 20, 2007 as Document No. 2007-0428993; and

WHEREAS, Section 2.5 of the Original Development Agreement specifies that the Original Development Agreement may be amended, in whole or in part, only in the manner provided for in Government Code Section 65868.1 and the procedure for adopting and entering into an amendment to the Original Development Agreement shall be the same as the procedure for adopting and entering into the Original Development Agreement; and

WHEREAS, the CITY and NMC Builders, LLC, a California limited liability company ("NMC Builders"), entered into that certain Agreement for the Financing and Construction of Phase I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony dated October 4, 2005, which is referred to both herein and in the Original Development Agreement as the "Construction Agreement;" and

WHEREAS, the CITY and NMC Builders have entered into the Amended and Restated Construction Agreement dated August 21, 2012 that supersedes and replaces the Construction Agreement (the "Construction Agreement Amendment"); and

WHEREAS, NMC Builders is identified as the Developer under the Construction Agreement Amendment; and

WHEREAS, OWNER is a member of NMC Builders and is a "Member" as such term is defined in the Construction Agreement Amendment; and

WHEREAS, OWNER and CITY have agreed to apply certain specified provisions of the Construction Agreement Amendment and to modify the Original Development Agreement; and

WHEREAS, the CITY and OWNER agree that execution of this First Amendment shall constitute Certification of Agreement Compliance under Section 6.4 of the Original Development Agreement and CITY shall issue its "Certificate of Agreement Compliance" within 10 days following the Effective Date of this First Amendment.

AGREEMENTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual agreements hereinafter contained, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Existing Definitions. The following terms when used in this First Amendment shall have the same meaning as defined in the Original Development Agreement: "CITY"; "Construction Agreement"; "Development"; Development Approvals"; "Development Exaction"; "Development Impact Fee"; "Development Plan"; "General Plan"; "Land Use Regulations"; "OWNER"; "Project", "Property", "Specific Plan"; "Subsequent Development Approvals"; and "Subsequent Land Use Regulations".

1.2 Additional and Modified Definitions.

1.2.1 The following additional terms shall be defined as follows:

"Construction Agreement Amendment" means that certain Amended and Restated Agreement for the Financing and Construction of Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders dated August 21, 2012.

"Effective Date" means the date that the ordinance adopting this First Amendment becomes effective.

"Model Units" means a maximum of fifteen (15) units constructed by OWNER prior to the construction of any Production Units and not offered for sale and occupancy until after all of the of the building permits for Production Units are issued.

"OWNER" means Ontario Schaefer Holdings, LLC, a Delaware limited liability company as successor in interest to Distinguished Land Development, Inc., a California corporation.

"Production Units" means all units constructed for sale and occupancy by OWNER but excludes the maximum fifteen (15) Model Units constructed by OWNER for promotion of sales.

"Storm Water Capacity Availability Equivalents" means a designated portion of the total Storm Water Capacity Availability made available through the completion of construction of each Phase of regional storm

water treatment facilities by the NMC Builders. OWNER shall be required to provide evidence of sufficient Storm Water Capacity Availability Equivalents (or portions thereof) based upon the storm water generation factors and assumptions contained in the Construction Agreement Amendment.

"Water Availability Equivalent (WAE)" means a designated portion of the total Net MDD made available through the construction of each Phase described in the Water Phasing Plan of the Construction Agreement Amendment. The number of Water Availability Equivalents (or portions thereof) required shall be based upon water demand factors and assumptions listed in the Construction Agreement Amendment as "Water Availability Equivalents by Land Use" for each land use category.

1.2.2 The following definitions shall be revised as follows:

"Existing Development Approvals" is revised to mean all Development Approvals approved or issued prior to the Effective Date of this Amendment. Existing Development Approvals includes the Development Approvals incorporated herein as Exhibit "C-R" and all other Development Approvals that are a matter of public record on the Effective Date of this Amendment.

"Existing Land Use Regulations" is revised to mean all Land Use Regulations in effect on the Effective Date of this Amendment and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date of this Amendment. Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit "D-R," and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date of this Amendment.

"Improvement" or "Improvements" is revised to mean those public improvements required to support the development of the Project as described in the Tract Map conditions for Tract No. 18419 and as further described in Exhibit "F" (the "Infrastructure Improvements Exhibit").

1.3 Exhibits. The following documents are attached to, and by this reference made a part of, this First Amendment:

Exhibit "C-R" –Revised Existing Development Approvals

Exhibit "D-R" – Revised Existing Land Use Regulations

Exhibit "F" — Infrastructure Improvements Exhibit

2. MODIFICATIONS TO DEVELOPMENT AGREEMENT TO CONFORM TO CONSTRUCTION AGREEMENT AMENDMENT

2.1 Continuing Requirement for the Funding of Fire Station No. 9 by NMC Builders for Issuance of Building Permits. The issuance of building permits for Production Units within the Property is contingent upon, among other things, the provision of payments from NMC Builders for the completion of the construction of CITY's Fire Station No. 9. CITY shall not issue building permits for the construction of Production Units within the Property unless and until CITY receives payments from NMC Builders in the amount estimated by CITY to be necessary and sufficient for the completion of the design and construction of Fire Station No. 9.

2.2 Fire Station Funding Requirements for Any permits Issued Prior the Provision of Payments from NMC Builders for the Completion of Construction of CITY'S Fire Station No. 9. If OWNER requests that CITY issue building permits for any Model Units or Production Units prior to CITY's receipt of payments from NMC Builders in an amount deemed by CITY to be necessary and sufficient for the design and construction of Fire Station No. 9, then prior to and as a condition precedent to CITY's issuance of any such building permits for the construction of any Model Units or Product Units, OWNER shall deposit, or shall have deposited, with NMC Builders an amount equal to the OWNER's Fire Station No. 9 Capital Contribution allocable to such unit(s).

2.3 Continuing Requirement for the Funding of Regional Water and Storm Water Treatment Improvements. Prior to, and as a condition precedent to CITY's approval of the Tract Map for Tract No. 18419, CITY shall require OWNER to provide evidence of sufficient Water Availability Equivalents for all Model Units and Production Units to be constructed on the Property. Prior to, and as a condition precedent to CITY's issuance of grading permits for any grading of the Property or prior to, and as a condition precedent to CITY's approval of the final Tract Map for Tract No. 18419, OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability for the Project. CITY and OWNER agree that the evidence of Storm Water Treatment Capacity Availability for the Project shall be based on the net acreage of OWNER's Project as defined in the Construction Agreement Amendment and as of the Effective Date of this Amendment such net acreage has been determined to be 42.439 acres. If the CITY has not issued sufficient Storm Water Treatment Capacity Availability for OWNER's Project, because regional storm water treatment facilities are not completed by NMC Builders, then OWNER may provide and CITY, in its sole discretion, may accept evidence of sufficient Storm Water Treatment Capacity that is conditioned upon the future completion of the regional storm water treatment facilities.

2.4 Modification of Public Services Funding Fees. As required by Section 4.6 of the Original Development Agreement and in order to ensure that the adequate provision of public services, including without limitation, police, fire, and other public safety services, is available to residents and occupants of OWNER's Project, OWNER shall provide a "Public Services Funding Fee." Section 4.6 of the Original Development Agreement stated that if the Construction Agreement with NMC Builders LLC was amended to modify the timing and/or the amounts of the installment payments prior to

Owner's payment of such installment payments, OWNER shall have the option to utilize the modified timing and amounts for the installment payments described in Sections 4.6.1 through 4.6.3. of the Original Development Agreement. Pursuant to those provisions, OWNER was not required, and has not paid, the First and Second Installments of the Public Service Funding Fees to CITY. The provisions of Section 4.6 of the Original Development Agreement shall be superseded and replaced with the following:

"4.6 Public Services Funding Fee. OWNER shall pay a Public Services Funding fee in the total amount of One Thousand Eight Hundred dollars ($1,800.00) per residential dwelling unit. OWNER shall pay the Public Services Funding Fee in one (1) installment within one hundred eighty (180) calendar days after the Effective Date of this First Amendment, or, at OWNER's option, in two (2) installments as follows:

4.6.1 First Installment (Residential uses). The first installment of the Public Services Funding Fee shall be Nine Hundred dollars ($900.00) per residential dwelling unit. The first installment shall be paid prior to, and as a condition precedent to the issuance of each building permit unless, the City commences construction of Fire Station No. 9 prior to the issuance of the first residential building permit for the Project (in which case the following payment structure shall apply). If the City commences construction of Fire Station No. 9 prior to the issuance of the first residential building permit for the Project, the first installment shall be based upon the "Maximum Development Density" of OWNER's Project, or the number of units described on "B Maps" if approved, as defined in Section 3.7.2.3 of the Construction Agreement Amendment. The first installment shall then be due and payable no later than 30 days following CITY's commencement of construction of Fire Station No. 9. Commencement of the construction shall be defined as the issuance of a grading permit or building permits, whichever, occurs first.

If the first installment amount is not paid for all residential dwelling units within the Project (based on the Maximum Development Density of the OWNER's Project, or the number of units described on "B Maps" if approved) by January 1, 2014, the amount of the first installment shall be increased. Such increase shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year(s), Additionally, the amount shall be further increased automatically by the percentage increase in the Consumer Price Index (Los Angeles-Anaheim-Riverside) on each January 1 thereafter.

4.6.2 Second Installment (Residential Uses). The second installment of the Public Services Funding Fee shall be Nine Hundred dollars ($900) per residential unit. The second installment shall be paid by OWNER at the time of the issuance of each building permit for the Project. The amount of the second installment shall increase automatically by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of

each year, beginning on January 1, 2014. OWNER may exercise the option to pay the second installment amount for all residential units, a portion of the residential units, or for the remainder of the residential units within the Project on or before each December 31st, before the second installment amount is automatically increased.

4.6.3 Single Installment (Non-residential Uses). A single installment payment of the Public Services Funding Fee shall be required in the amount of Fifty Four Cents ($.54) per square foot of non-residential buildings. The single installment for non-residential uses shall be due and payable prior to the issuance of each building permit for each non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over each preceding year on January 1st of each year, beginning on January 1, 2014. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before the Single Installment amount is automatically increased.

2.5 Modification of School Financing Provisions. The provisions of Section 5.2 School Financing. of the Original Development Agreement shall be superseded and replaced with the following:

5.2 Schools. CITY and OWNER agree that OWNER, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the New Model Colony area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the New Model Colony area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met its school obligations may be required by the CITY as a condition to the issuance by the City of any entitlements for OWNER's Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), CITY shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 5.2."

2.6 Modification of the Amounts of the CFD to Finance City Services. Prior to, and as a condition precedent to, the recordation of each final subdivision map creating buildable lots, such map shall be included in a Community Facilities District (CFD) to finance CITY services through annual special taxes. The amounts contained in Section 5.1 Financing Mechanism(s) in the Original Development Agreement shall be modified as follows:

Single Family Detached Dwelling Unit to $1,334.00

Multiple Family Dwelling Unit to $1,156.00

Gated Apartment Community Dwelling Unit to $969.00

Non-Residential buildings to $.25 per square foot.

These modified amounts shall be subject to an automatic increase, not to exceed four (4%) percent per year, beginning on January 1, 2014.

2.7 Remaining Provisions of Section 5. FINANCING OF PUBLIC IMPROVEMENTS All other provisions of Section 5. FINANCING OF PUBLIC IMPROVEMENTS shall continue and shall be unaffected by this First Amendment.

3. MODIFICATIONS TO DEVELOPMENT AGREEMENT TO REQUIRE CONSTRUCTION OF SPECIFIED PUBLIC IMPROVEMENTS

3.1 Modifications to Conceptual Phasing Plan. Section 3.4 of the Original Development Agreement is hereby amended to read as follows:

"3.4 Conceptual Phasing Plan. Development of the Property is contingent, in part, on the phasing of area-wide infrastructure improvements over which the OWNER has limited control. Attached hereto as Exhibit "E-R" is a revised Conceptual Phasing Plan which is based on the OWNER's best estimate of the timing of the completion of needed infrastructure improvements. The conceptual phasing plan is an estimate only and is subject to the same timing constraints and the exercise of OWNER's business judgment as set forth in the Original Development Agreement.

3.4.1 Attached hereto as Exhibit "F" is a description of the infrastructure improvements needed for the development of the Property ("the Infrastructure Improvement Exhibit").

3.4.2 OWNER agrees that development of the Property shall require the construction of a significant portion of permanent master planned water utility infrastructure, known as the "Francis Zone Water Loop." OWNER shall be responsible for the construction of the necessary extension of permanent master planned water utility infrastructure to the Property to the extent that such water utility infrastructure has not been constructed by NMC Builders or others. CITY agrees that OWNER may initiate grading after recordation of the Final Tract Map; however, OWNER acknowledges and agrees that no Building Permits shall be

issued by CITY for Production Units prior to the completion of the extension of permanent master planned potable and recycled water utility infrastructure to serve the Project.

3.4.3 OWNER agrees that development of the Project shall require the construction of a significant portion of Archibald Avenue and also a portion of Schaefer Avenue, all as shown on Exhibit F. OWNER shall be responsible for the construction of the master planned street and related improvements in Archibald and Schaefer Avenues. City and OWNER also acknowledge and agree that OWNER shall be required to construct signalized intersection improvements at the intersections of Archibald Avenue and The Avenue and Archibald Avenue and Schaefer Avenues, however, OWNER shall only be required to construct the intersection improvements at these intersections as shown on Exhibit F."

3.2 Requirements for the Construction of Public Infrastructure and Improvements. The following provisions shall be added to Section 3.7 Public Works; Utilities of the Original Development Agreement:

"3.7.1 OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit "F" and any and all tentative tract map conditions. Unless otherwise specified in the Subdivision Agreement/Tract Map conditions, all other required Improvements for each Tract Map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of the first building permit for any units for the Project, except the maximum number of fifteen (15) Model Units.

3.7.1.1 Construction of Model Units prior to Construction of the Interim Units and Production Units. Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of fifteen (15) Model Units and other temporary sales facilities, City may issue a maximum of fifteen (15) building permits for Model Units. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection and other public health and safety requirements for the Model Units."

3.3 Modifications to Section 4.2 of the Original Development Agreement. Section 4.2.1, 4.2.2 and 4.2.3 of the Original Development Agreement shall be amended to read as follows:

"4.2.1 Amount of Development Impact Fee. Development Impact Fees shall be paid by OWNER, and any credit and/or reimbursement shall be provided to OWNER, in accordance with Section 3.1 of the Construction Agreement Amendment. Without limiting the nature of the foregoing, nothing contained in this Agreement shall affect the ability of other public agencies to impose and amend, from time to time, Development Impact Fees established or imposed by

such other public agencies, even though such Development Impact Fees may be collected by CITY.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of a building permit for each applicable residential or other unit, except for Development Impact Fees and Open Space and Habitat Acquisition Development Impact fees which shall be paid by OWNER to CITY prior to the issuance of a grading permit."

4.2.3 Parkland and Quimby Act Fees Pursuant to the General Plan (OntarioPlan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents) OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from City. CITY and OWNER agree that Lots O, M, J and I of Tract 18419 consisting of approximately 2.13 net acres shall satisfy OWNER's additional park development requirement. Areas designated as Park areas shall be transferred to a homeowners' association and the homeowners' association shall be responsible for all maintenance of the developed park areas. OWNER shall also pay the full Development Impact Fee for the Parkland Acquisition and Development Fee category (Quimby Act fees) for the Project.

Additionally, Sections 4.2.4 and 4.2.5 of the Original Development Agreement shall be removed and replaced by the following:

"4.2.4 Construction of DIF Program Infrastructure (Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and the Construction Agreement Amendment, CITY agrees that CITY shall issue DIF Credit (as defined in the Construction Agreement Amendment) in accordance with the provisions of the Construction Agreement Amendment and any amendments thereto. Use of DIF Credit issued to OWNER as a member of NMC Builders LLC to offset OWNER's DIF payment obligations shall also be subject to the provisions of the Construction Agreement Amendment and any amendments thereto.

4.2.5 Construction of DIF Program Infrastructure (Non-Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and such public improvements are not included in the Construction Agreement Amendment between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit and DIF Reimbursement in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitation on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. OWNER may also

be eligible to receive reimbursement from DIF collected by CITY and paid by other development that benefits from OWNER's construction of DIF Program Infrastructure. Any such DIF Reimbursement shall be subject to a Fee Credit Agreement between CITY and OWNER. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements."

4. OTHER MODIFICATIONS.

4.1 Assignment and Assumption. CITY and OWNER acknowledge that Distinguished Land Development, Inc. ("DLD") has transferred the Property to OWNER and has transferred and assigned to OWNER, all rights, title and interest to the Property. OWNER hereby expressly and unconditionally assumes all the rights, duties and obligations of DLD as the predecessor in interest to OWNER under the Original Development Agreement, including, without limitation, all of the general rights, duties and obligations of DLD under the Original Development Agreement for the development of the Property. OWNER agrees to observe and fully perform all of DLD's and OWNER's obligations under the Original Development Agreement and this First Amendment and to be subject to all the terms and conditions thereof, it being the express intention that OWNER, upon execution of this First Amendment, shall become substituted for DLD as the "OWNER" under the Original Development Agreement and this First Amendment.

4.2 Release of Assignor. Pursuant to section 2.4.2 of the Original Development Agreement, DLD as the previous OWNER shall be free from any and all liabilities accruing on or after the date of the transfer of title to the Property with respect to the Development Agreement. No breach or default under this First Amendment or the Development Agreement by the current OWNER shall be attributed to DLD as the previous OWNER.

5. INTEGRATION.

5.1 Integration of Previous Understandings and Clarifications. This First Amendment reflects the complete understanding of the parties with respect to the subject matter hereof. To the extent this First Amendment conflicts with the Original Development Agreement, this First Amendment supersedes such previous document(s). In all other respects, the parties hereto re-affirm and ratify all other provisions of the Original Development Agreement and First Supplemental Memorandum. This First Amendment shall be recorded against the Property.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date the ordinance adopting this First Amendment becomes effective ("Effective Date").

SIGNATURE PAGE
TO FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS, LLC

"OWNER"

Ontario Schaefer Holdings, LLC
a Delaware limited liability company

By: _____
Richard Cisakowski
Manager

Date: _____

"CITY"

CITY OF ONTARIO

By:_____
Al C. Boling, City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:
BEST, BEST & KRIEGER LLP

_____
City Attorney

Exhibit "C-R"
Revised Existing Development Approvals

<u>On November 28, 2006, the Planning Commission:</u>

a) Issued Resolution No. PC06-*** recommending City Council adopt and certify The Avenue Specific Plan Environmental Impact Report;

b) Issued Resolution No. PC06-143 recommending City Council approval of The Avenue Specific Plan (PSP05-003).

<u>On December 19, 2006, the City Council:</u>

a) Adopted Resolution No. 2006-131 certifying The Avenue Specific Plan Environmental Impact Report (SCH No. 2005071109)

<u>On January 16, 2007, the City Council:</u>

a) Adopted Ordinance No. 2851 approving The Avenue Specific Plan (PSP05-003)

<u>On May 22, 2007, the Planning Commission:</u>

a) Adopted Resolution No. PC07-061 recommending City Council approval of the Ontario Land Investments, LLC, Development Agreement (PDA07-001)

<u>On June 19, 2007, the City Council:</u>

a) Adopted Ordinance No. 2862 approving the Ontario Land Investments, LLC, Development Agreement

<u>On February 2, 2010, the City Council:</u>

a) Adopted Resolution No. 2010-010 certifying the Supplemental Environmental Impact Report for an amendment to The Avenue Specific Plan (File No. PSPA07-004)

b) Adopted Resolution No. 2010-011 approving an amendment to The Avenue Specific Plan (File No. PSPA07-004)

<u>On January 28, 2014, the Planning Commission:</u>

a) Adopted Resolution No. PC13-*** recommending City Council approval of the Ontario Schaefer Holdings, LLC, Development Agreement Amendment

Exhibit “D-R”
Revised Existing Land Use Regulations

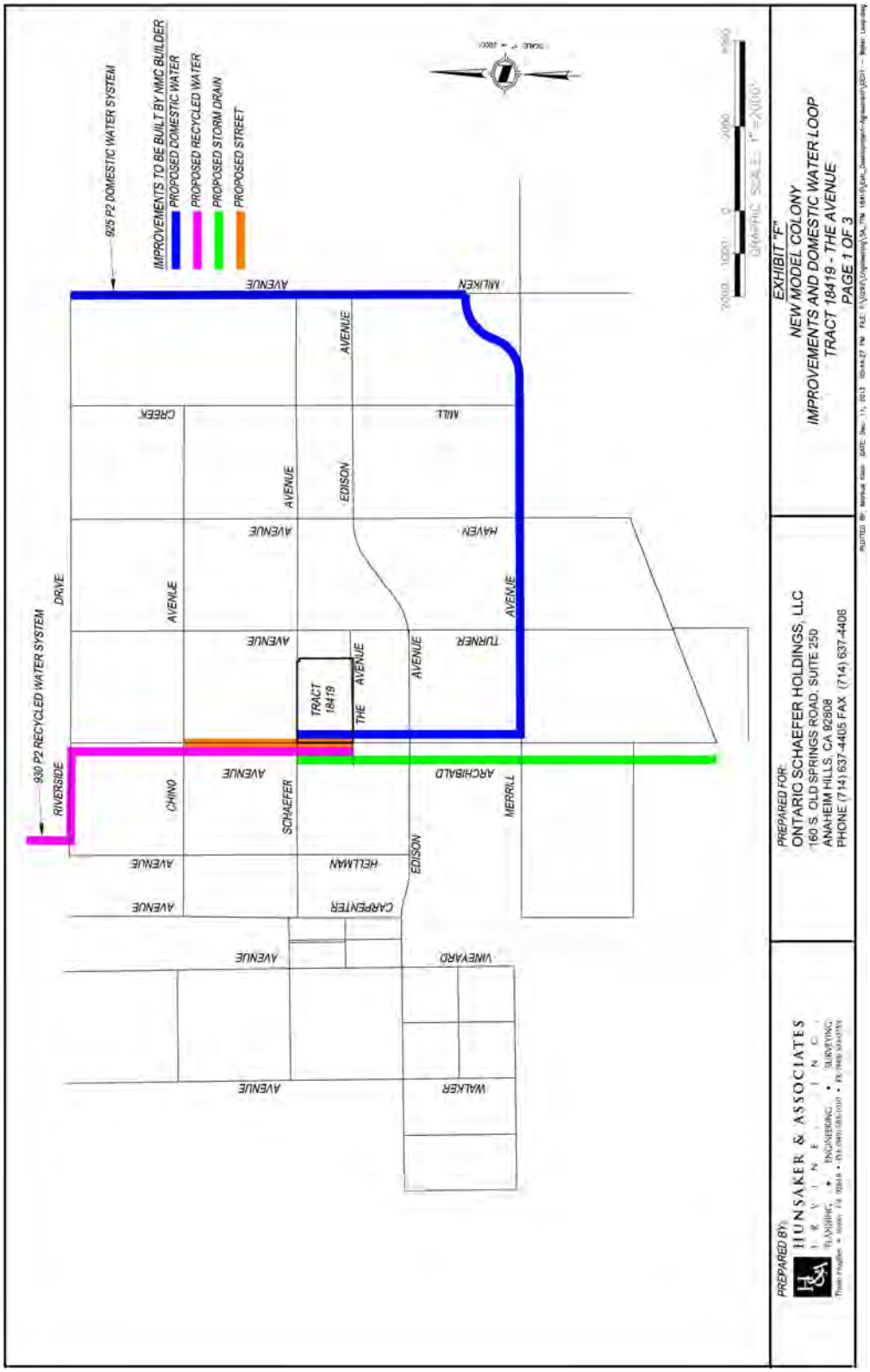
These documents are attached by reference only:

1. The Avenue Specific Plan

2. The Avenue Environmental Impact Report and Supplemental EIR, Resolution Nos. 2006-131 and 2010-010

3. City of Ontario Municipal Code, Titles:
    a. Six - Sanitation & Health
    b. Seven - Public Works
    c. Eight - Building Regulations
    d. Nine - Development Code
    e. Ten - Parks & Recreation

Exhibit “F”
Infrastructure Improvements



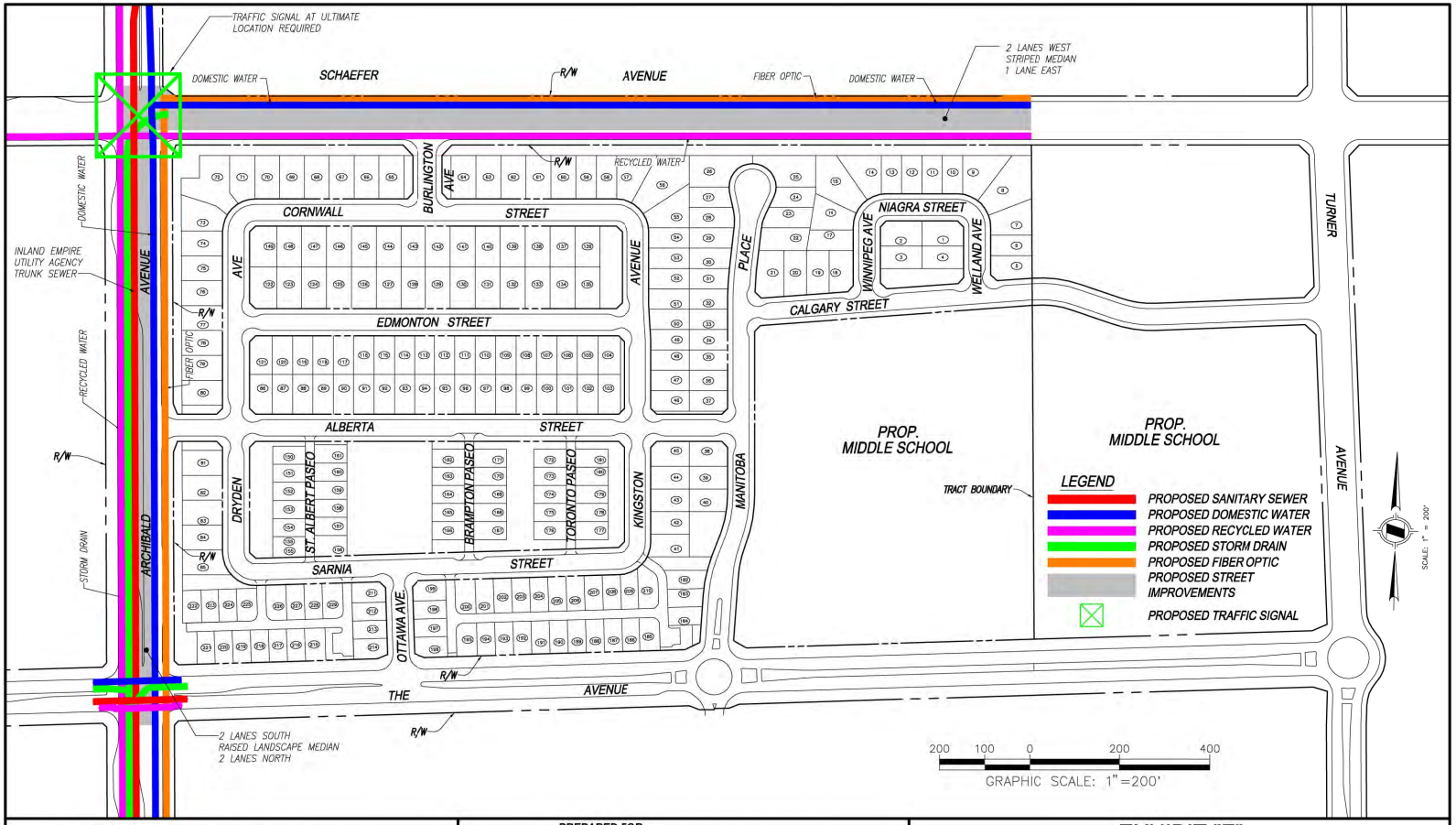


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EXHIBIT "F"
TRACT 18419
MASTER PLAN INFRASTRUCTURE IMPROVEMENTS
PAGE 2 OF 3

PLOTTED BY: Markus Klein DATE: Dec. 11, 2013 07:05:36 PM FILE: F:\0292\Engineering\SA_TM 18419\Exh_Development-Agreement\DE02 - Master.dwg

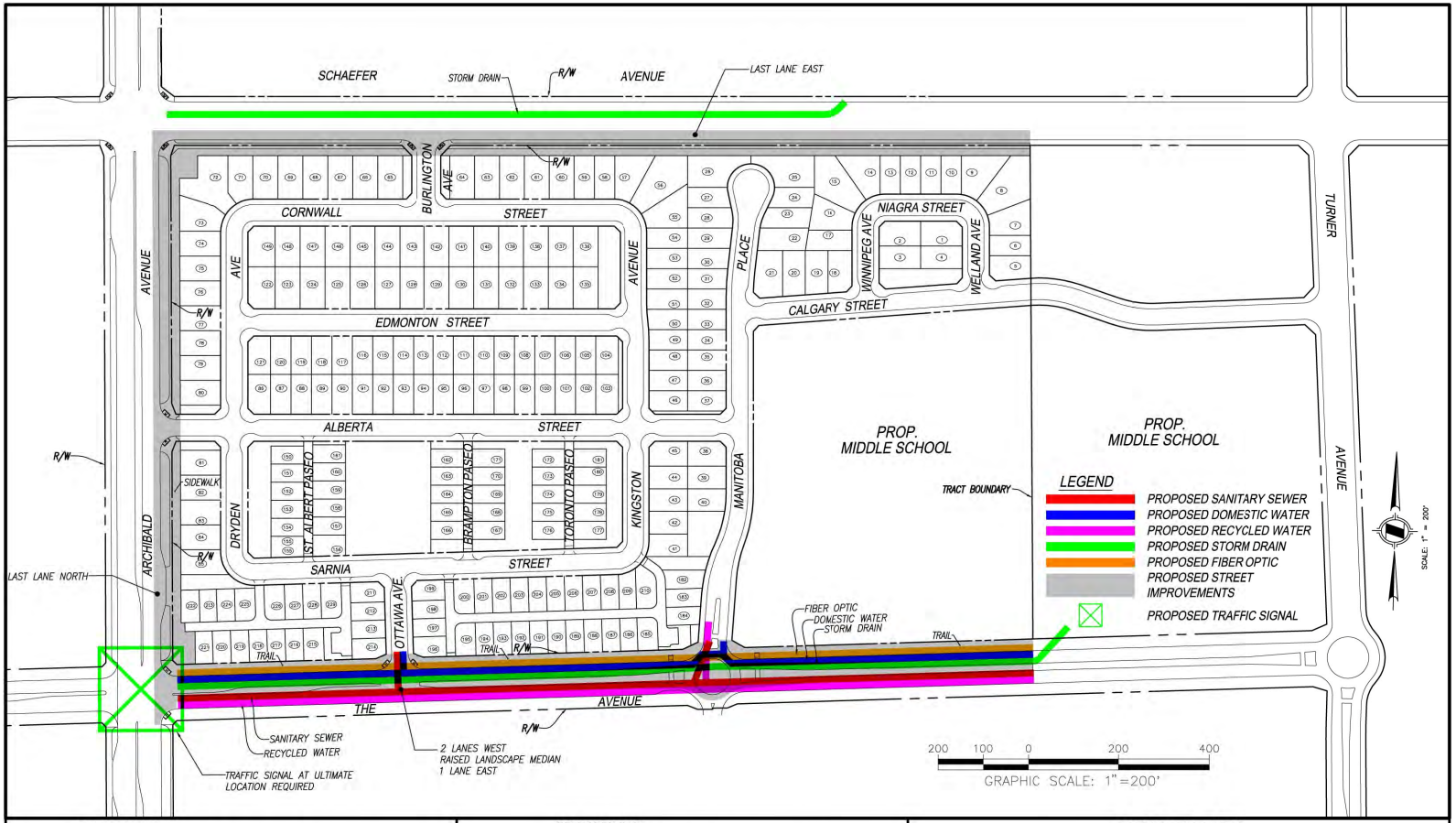

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EXHIBIT "F"
TRACT 18419
NON-MASTER PLAN INFRASTRUCTURE IMPROVEMENTS
PAGE 3 OF 3

PLOTTED BY: Markus Klein DATE: Dec. 11, 2013 07:07:06 PM FILE: F:\0292\Engineering\SA_TTM 18419\Exh_Development-Agreement\DE03 - Non-Master.dwg

CITY OF ONTARIO

Agenda Report
February 18, 2014

SECTION:
ADMINISTRATIVE REPORTS/ DISCUSSION/ACTION

SUBJECT: CONSIDERATION OF ELECTED OFFICIALS COMPENSATION

RECOMMENDATION: That the City Council consider and give direction for a modification to the monthly salary amounts for elected officials subject to California Government Code Section 36516; Ontario Municipal Code Title 2, Chapter 1, Article 2; and Ontario Municipal Code Title 2, Chapter 3, Article 5.

COUNCIL GOALS: **Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health**
Operate in a Businesslike Manner

FISCAL IMPACT: Any modification to salary compensation for elected officials would be effective after certification of the November 2014 election results and the next City Council is sworn in and seated. The fiscal impact if the maximum allowable increase were approved would result in a projected annual cost impact of $50,957 for all elected officials. The actual fiscal impact will be dependent upon the salary modifications ultimately approved for the City Council, City Clerk, and City Treasurer.

BACKGROUND: Pursuant to California Government Code §36516, the City Council may adjust salary compensation up to 5% each year. Salary compensation for City Council Members was last adjusted by Ordinance No. 2826 which set the monthly amount at $1,406.25, effective after the November 2006 election. In January 2008, the City Council approved a 10% increase ($144.14) to be effective after the new City Council was seated as a result of the November 2008 election. In January 2009, in light of the nationwide economic downturn, the City Council deferred the previously approved 10% salary adjustment, which had yet to be implemented after the 2008 election. The Council's action took place in conjunction with all City employee groups and labor units foregoing raises and/or merit increases during the recession. The Council deferral was to continue until such time as all City employee groups and labor units were able to receive salary increases. A similar situation existed with the City Clerk and City Treasurer with a 10% increase (approved by Resolution

STAFF MEMBER PRESENTING: Al C. Boling, City Manager

Prepared by: Al C. Boling
Department: Administration

City Manager Approval:

Submitted to Council/O.H.A. 02/18/2014
Approved:
Continued to:
Denied:

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No. 2007-151) being deferred in January 2009. As such, the monthly compensation for both positions remains at $931.25.

Under Government Code §36516, the City Council may adjust salary compensation up to 5% each year. Since the last City Council salary adjustment was effective after the 2006 election (or eight years ago), the maximum allowable increase is now $671.44 per month, to be effective after the November 2014 election. In considering any Council salary modification, it is recommended that a proportionate adjustment ultimately be made to the salaries for the City Clerk and City Treasurer.